

**Council Guidance  
on the Private Rented Sector**

**Version 1**

**Issued - November 2010**

## Contents

<b>1.0</b>	<b>Private Tenancies (NI) Order 2006 .....</b>	<b>5</b>
1.1	Part I – Introductory.....	5
1.1.1	Article 3 - Meaning of Private Tenancy.....	5
1.2	Part II – Obligations of Landlords and Tenants .....	5
1.2.1	Articles 4 & 5 – Rent Book & Statement of Tenancy Terms .....	5
1.2.2	Articles 6 – 12 - Repairing Responsibilities .....	6
1.2.3	Articles 13 & 14 – Duration of Private Tenancies .....	7
1.3	Part III - Unfitness and Disrepair .....	8
1.3.1	Articles 18 & 19 – Notice of Unfitness and Notice of Disrepair .....	9
1.3.2	Article 20 – Matters to be taken into Account by Appropriate District Council .....	11
1.3.3	Article 21 – Consultation with the Executive .....	11
1.3.4	Article 22 – Appeal against Notice of Unfitness or Notice of Disrepair .....	11
1.3.5	Article 23 – Operative Date of Notice of Unfitness or Notice of Disrepair .....	12
1.3.6	Article 24 – Offence of Failing to Comply with a Notice of Unfitness or Notice of Disrepair .....	12
1.3.7	Article 25 – Enforcement of Notice of Unfitness or Notice of Disrepair .....	13
1.3.8	Article 26 – Power to Charge for Enforcement Action .....	13
1.3.9	Article 27 – Power to Enter Dwelling-Houses .....	14
1.3.10	Article 28 - Obstruction .....	14
1.3.11	Article 29 – Repairs Grants .....	14
1.4	Part IV – Certificates of Fitness and Rent Control .....	14
1.4.1	What is rent control?.....	14
1.4.2	Why is rent control necessary? .....	15
1.4.3	Results gained from rent control.....	16
1.4.4	Article 31 – Meaning of a “prescribed dwelling house” .....	16
1.4.5	Article 33 – Landlord’s Application to Have Dwelling- House Inspected .....	17

1.4.6	Article 34 – Landlord’s Application: Ancillary Provisions .....	18
1.4.7	Article 35 – Tenant’s Application to have Dwelling-House Inspected .....	19
1.4.8	Article 36 – Functions of the Appropriate District Council .....	19
1.4.9	Article 37 – Appeal to County Court .....	20
1.4.10	Article 38 – Cessation of Certificate of Unfitness.....	21
1.4.11	Article 40 – Tenancies Subject to Rent Control (also see Chapter II.....	21
	Property Condition .....	22
1.4.12	Articles 48 to 52 – The Rent Limit .....	23
1.5	Part V – Amendments to the Rent Order .....	23
1.6	Part VI – Miscellaneous .....	25
<b>2.0</b>	<b>Rent (NI) Order 1978 (The Rent Order) .....</b>	<b>27</b>
2.1	Summary.....	27
2.2	Harassment and Illegal Eviction .....	29
2.2.1	What is Harassment? .....	30
2.2.2	Illegal Eviction .....	30
2.2.3	What Rights Do Tenants Have? .....	31
<b>3.0</b>	<b>Guidance and Advice to assist Councils in the delivery of their statutory responsibilities.....</b>	<b>32</b>
3.1	Identify new tenancies.....	32
3.2	Improve awareness of the council’s role in the private rented sector with landlords and tenants .....	34
3.3	Build relationships with voluntary and community groups to increase awareness of the Order.....	34
3.4	Websites .....	35
3.5	Sharing Information and Experience between Councils and partner organisations .....	36
3.6	Extend focus from unfitness to other elements in the private rented sector.....	36
3.7	Best Practice .....	37

<b>4.0</b>	<b>Role of Organisations within the Private Rented Sector (cross reference in document).....</b>	<b>39</b>
4.1	Department for Social Development – www.dsdni.gov.uk.....	39
4.2	Rent Officer .....	39
4.3	Councils .....	40
4.4	Northern Ireland Housing Executive.....	40
4.5	Housing Rights Service and Advice Agencies.....	41
4.6	Other Government Departments .....	41
<b>5.0</b>	<b>Building Sound Foundations: A Strategy for the Private Rented Sector .....</b>	<b>43</b>
5.1	Knowledge and Awareness.....	43
5.2	Impact of Private Tenancies (NI) Order 2006.....	44
5.3	Tenancy Management .....	45
5.4	Security of Tenure .....	46
5.5	Fitness Standard .....	47
5.6	Improving Accessibility .....	48
<b>Annex A</b>	<b>Fitness Standard.....</b>	<b>50</b>
<b>Annex B</b>	<b>Notices of Unfitness and Notices of Disrepair .....</b>	<b>98</b>
<b>Annex C</b>	<b>Protected &amp; Statutory Tenancies .....</b>	<b>113</b>
<b>Annex D</b>	<b>Summary of Compliance and Enforcement with Private Tenancies (NI) Order 2006 .....</b>	<b>119</b>
<b>Annex E</b>	<b>Information Sources .....</b>	<b>121</b>

## **1.0 Private Tenancies (NI) Order 2006**

This Order makes provision with respect to privately rented dwelling-houses in Northern Ireland. It is the first major piece of legislation dealing with the private rented sector since the Rent (NI) Order 1978 and came into operation on 1<sup>st</sup> April 2007.

### **1.1 Part I – Introductory**

#### **1.1.1 Article 3 - Meaning of Private Tenancy**

Defines a private tenancy as any tenancy or dwelling house except

- A fee farm grant
- A tenancy for a term exceeding 99 years unless it can be ended before this term
- A holiday let
- A tenancy under which the landlord is
  - The Crown
  - A Government Department
  - The Housing Executive
  - A registered Housing Association

### **1.2 Part II – Obligations of Landlords and Tenants**

#### **1.2.1 Articles 4 & 5 – Rent Book & Statement of Tenancy Terms**

- Article 4 (5)– Tenant to be given notice regarding certain matters – Statement of Tenancy Terms
- Article 5 (4) – Tenant to be provided with a rent book

A rent book and a statement of tenancy terms are important in terms of providing the landlord and tenant with information on their rights and responsibilities, for example to set out which party is responsible for repairs. They help to minimise disputes as information such as the rent payable,

deposit paid and conditions under which it will be repaid, duration of tenancy and notice of termination are agreed in writing. The rent book is a record of rent paid which offers vital protection to the tenant. The documents also provide tenants with contact information of the landlord.

The Housing (Amendment) (No. 2) Bill, currently going through the Assembly, is repealing Article 4 of the Private Tenancies (NI) Order 2006 to remove the duplication of information contained in the statement of tenancy terms and the rent book. This will also make the information that a landlord must give a tenant at the beginning of a tenancy simpler and easier to enforce. The current Rent Book Regulations (NI) 2007 will be amended to incorporate all the information currently contained in the statement of tenancy terms. This should come into operation in April 2011 ([see section 5.2](#)).

### **1.2.2 Articles 6 – 12 - Repairing Responsibilities**

In the absence of an agreement / statement of tenancy terms these Articles set out the default position. However, the landlord and tenant can agree to different responsibilities in a lease or tenancy agreement.

#### **What is the Landlord Responsible for?**

- Structure and exterior of the property, including exterior paintwork, drains, gutters and external pipes.
- Interior of the property other than matters covered under tenant responsibility.
- Any installations for the supply and use of water, gas, electricity and sanitation (including baths, sinks, wash-hand basins and toilets).
- Any appliances provided by the landlord under the tenancy for making use of the supply of water, gas and electricity.
- Any installations for space heating and water heating.
- Any fixtures, fittings and furnishings provided by the landlord under the terms of the tenancy.
- Keeping in good repair any common areas or areas required for access.
- Keeping any area required for access adequately lit and safe to use.

### **What is the Tenant Responsible for?**

- Generally taking proper care of the property as a good tenant.
- Making good any damage to the property caused by the behaviour or negligence of the tenant, members of his/her household or any other person lawfully visiting or living in the property.
- Keeping the interior of the property in reasonable decorative order.
- Not carrying out alterations to the property without the landlord's permission although this consent must not be reasonably refused.

A private tenant must permit the landlord and persons authorised by him to enter the premises at reasonable times after giving the tenant reasonable notice in order to inspect the state of repair and carry out repairs / work for which the landlord is responsible.

If the tenant refuses to allow the landlord access to the property the landlord may apply for a court order empowering him and persons authorised by him to enter the premises and carry out work.

The Landlord is normally responsible for the maintenance of any work / improvement carried out by a previous tenant.

### **1.2.3 Articles 13 & 14 – Duration of Private Tenancies**

After 1 April 2007, private tenancies granted where no duration is set shall have an initial 6 month default term. This does not apply to statutory or protected tenancies.

### **Notice to Quit**

A notice to quit by a landlord or tenant is not valid unless it is given in writing not less than 4 weeks before the date on which it is to take effect. However, where the tenant refuses to leave a court order must be obtained. A notice to quit is not required for a fixed term tenancy.

### 1.3 Part III - Unfitness and Disrepair

Prior to the introduction of the Private Tenancies Order, unfitness in the private rented sector was high and while the unfitness levels has decreased, it still remains a problem, leading to the negative impression the sector suffers from.

**A Notice of Refusal** (leading to rent control) is used on a pre 1945 dwelling house that is unfit where there is a new tenancy and on protected tenancies that are found to be unfit. However, on unfit rented properties with an existing tenancy, rather than waiting for a new tenancy, a notice of unfitness or disrepair can be issued.

**A Notice of Unfitness** is served on an unfit house whereas a **Notice of Disrepair** is served on a house which is fit for human habitation but which is in a state of disrepair ([reference 1.3.1](#)). A rented property with a certificate of fitness in place can have a Notice of Disrepair issued against it.

Only a Notice of Unfitness for a property constructed pre 1945 and let after 1 April 2007 will be subject to rent control. Best practice would be that, before issuing a Notice of Unfitness, the council encourages the landlord to apply for a certificate of fitness which he is required to do under Article 33 ([reference 1.4.5](#)).

Formal fitness enforcement action is generally viewed as a last resort and as a matter of good practice, where a council identifies a property that is unfit and prior to issuing a statutory notice, they should consider the case for drawing this informally to the attention of the owner or landlord.

It is essential that councils make a point of clearly explaining decisions to those against whom they take enforcement action.

When issuing a Notice of Unfitness or Notice of Refusal, best practice would be, when listing the work that will make the property fit, to list the additional

work required to ensure that the property will not receive a Notice of Disrepair separately. This will allow for all the necessary work to be completed at the one time and reduce upheaval for tenant and costs for landlord.

As best practice, depending on the amount of work being undertaken, the landlord should be encouraged to provide alternative accommodation for the tenant while work is being carried out.

Councils can undertake the work where a landlord does not comply and make a charge on the property as a means of recovering any expenses incurred in carrying out the work to make the property fit ([reference 1.3.7](#) and [1.3.8](#)).

The [Private Tenancies \(Forms etc.\) \(Northern Ireland\) 2007](#) contains the forms to be used to exercise the functions of this Order, including the application for fitness inspection of a dwelling house.

The fees that a district council can charge in respect of an application to conduct an inspection of a dwelling house are set out in the Prescribed Fees and Charges Regulations (Northern Ireland) 2007. Schedule 2 sets out that the fee for an initial fitness inspection is £50 and the fee for re-inspection is £100. This is under currently review.

Please see [Annex A](#) for detailed information on the fitness standard and [Annex B](#) for guidance on the factors that district councils should take into account when deciding whether or not to issue a Notice of Unfitness or a Notice of Disrepair. Article 46 of the Housing (NI) Order 1981 (NI 3) (standard of fitness for human habitation) shall apply in determining whether a house is fit for human habitation.

### **1.3.1 Articles 18 & 19 – Notice of Unfitness and Notice of Disrepair**

Provide district councils with enforcement powers in relation to unfit private tenancies or tenancies which are fit but in disrepair.

A district council can serve a notice of unfitness on the owner of the dwelling-house where it is satisfied that the dwelling house is unfit for human habitation, in accordance with the fitness definition in the Housing (Northern Ireland) Order 1981; guidance is included in [Annex A](#).

The district council can serve a notice of disrepair where the dwelling-house is fit for human habitation and if the council is satisfied that it is in such a state of disrepair that substantial repairs are necessary to bring it up to a reasonable standard. The criteria to be used when deciding 'reasonable standard' are stated as relating to the age, character and locality of the dwelling-house, or its condition is such as to interfere materially with the personal comfort of the occupying tenant. In this situation the tenant concerned does not need to have made a complaint to the council.

A Notice of Unfitness or Disrepair can be served on the owner in respect of a flat which forms part of a larger building and where the unfitness or disrepair emanates from a part of the building outside the flat. The council must issue a copy of the Notice of Unfitness on the tenant, the Housing Executive and the rent officer. A copy of the Notice of Disrepair must be served on the tenant.

The person on whom the notice is served must execute the works specified in the notice within the stated period, although this period must not be less than 21 days from the date the notice is served. In a Notice of Unfitness the district council must also be of the opinion that the works specified are capable of rendering the house fit for human habitation. In a Notice of Disrepair the district council must state in the notice its reasons for serving the notice of disrepair and the notice cannot contain works of internal decoration.

The provisions of this Article are subject to Article 21, consultation with the Executive ([reference 1.3.3](#)).

### **1.3.2 Article 20 – Matters to be taken into Account by Appropriate District Council**

The Department has power to issue guidance to district councils on the matters to be taken into account when utilising their powers under Articles 18 and 19.

### **1.3.3 Article 21 – Consultation with the Executive**

It is important to ensure that district councils and the Housing Executive are working together. The district council must consult with the Northern Ireland Housing Executive to ascertain if any of its development functions are to be exercised in respect of the dwelling-house, or if the Housing Executive has plans to include the dwelling-house in a group repair scheme within a 12 month period. This Article does not require the Housing Executive to serve a repair notice under Article 41 of the 1981 Housing Order.

### **1.3.4 Article 22 – Appeal against Notice of Unfitness or Notice of Disrepair**

Provides the appeal mechanism for landlords or tenants who have been issued with a notice of unfitness or disrepair by the district council and who wish to have this quashed or varied. This in effect freezes action in respect of any such notice until a court has given a determination.

An appeal against a notice of unfitness or notice of disrepair must be made to the county court within 21 days of the notice being served. The court can rule on the question of whether the service of the notice was the most satisfactory course of action and the court has three options:

- (i) agreeing with the notice
- (ii) cancelling the notice or
- (iii) varying the notice.

### **1.3.5 Article 23 – Operative Date of Notice of Unfitness or Notice of Disrepair**

Where no appeal is brought, the notice becomes effective after 21 days. This is the end of the period during which an appeal can be brought to the County Court.

Where a decision is appealed to the county court, the notice becomes operative at the expiry of the period within which an appeal to the Court of Appeal could have been made. Where a decision of the County Court is appealed to the Court Of Appeal, the notice becomes effective on the date of the Court of Appeal's determination. Where an appeal is withdrawn, this has the same effect as confirming the notice.

The council should take no enforcement action until the notice has come into force.

### **1.3.6 Article 24 – Offence of Failing to Comply with a Notice of Unfitness or Notice of Disrepair**

Provides the basis for the enforcement of notices of unfitness and disrepair by making it a failure to comply with a notice, within the time specified in the notice, an offence punishable by a fine. It also creates a subsequent offence if the non-compliance continues for 14 days after the initial conviction. This would require the council to return to the courts for second and subsequent breaches.

The requirement to carry out the work in the notice continues even if the time period given in the notice has expired and the provisions of this Article do not prevent the district council from exercising its powers under Article 25 (i.e. carrying out the work required and charging the owner).

### **1.3.7 Article 25 – Enforcement of Notice of Unfitness or Notice of Disrepair**

Provides the district council with a range of options relating to enforcement. Councils can carry out the work specified in a notice of unfitness or disrepair once the appropriate period of time has expired. District councils are also authorised to recover the expenses incurred in this action as a civil debt together with interest at a rate to be prescribed by the Department (not yet prescribed). Until the debt has been settled, the amount due to the council can be registered as a charge on the land (i.e. a statutory charge on the property) and this charge must be registered within 2 months of the date on which the demand is served.

As stated under Article 15 above, notices are served on 'owners' which by definition includes agents. This Article provides agents with a defence if they can show that they are merely rent collectors and have not been in receipt of sufficient rental income since the date of the service of the notice to meet the council's claim in full. In such cases, the agent's liability is limited to the amount of money he has, or has had, in his possession.

A council can authorise a person to enter the dwelling-house in question ([see Article 27](#)) where it intends to carry out the required works itself.

### **1.3.8 Article 26 – Power to Charge for Enforcement Action**

Permits the district council to charge for the expenses incurred in serving a notice of unfitness or disrepair. These expenses include those incurred in deciding whether to serve a notice, in identifying the work required and in serving the notice. The amount of the charge must not exceed any amount the Department may specify in regulations (not yet prescribed).

Where a court has allowed an appeal against a notice, it can also reduce or quash any charge which has been made, and it can require the payment of the charge. The district council has the right to implement either or both

charges from this Article and Article 25 as it sees appropriate.

### **1.3.9 Article 27 – Power to Enter Dwelling-Houses**

Provides district councils with the power to enter a dwelling-house at any reasonable time in order to carry out an inspection or to complete the works listed in a notice of disrepair or unfitness. At least 24 hours' notice of an inspection or survey must be given to the occupier and to the owner, if this person's identity is known. At least 6 days' notice must be given in the case of carrying out work. The person authorised to enter must be provided with written authorisation by the district council and this authorisation must state the exact reasons for entry.

### **1.3.10 Article 28 - Obstruction**

Underpins the powers given in Article 27 by creating an offence of obstruction where any person obstructs either an officer of a district council, or a person authorised in relation to the council's functions under Part II and Part III of the Private Tenancies Order.

### **1.3.11 Article 29 – Repairs Grants**

Currently no grants are available for a Notice of Unfitness or Disrepair but a repair grant is available on foot of a Public Health Notice. Support for repair and improvement is currently being reviewed by the Department.

## **1.4 Part IV – Certificates of Fitness and Rent Control**

### **1.4.1 What is rent control?**

Rent control is when a maximum rent is set on a property that is privately rented. All protected and statutory tenancies have their rents controlled by legislation (The Rent (NI) Order 1978 and the Private Tenancies (NI) Order

2006). In addition, any new tenancy after 1 April 2007 which is found to be unfit for human habitation is also rent controlled.

Prior to 1978, most tenancies of dwellings which had been built before 1956 were protected tenancies, with tenants having lifetime security of tenure and controlled rents. Since 1978, the number of such tenancies has been declining rapidly. [Annex C](#) contains guidance on how to determine if a tenancy is, or was, governed by the Rent (NI) Order 1978. The Rent Officer, Ronan Murphy, can also provide information on protected or statutory tenancies. He can be contacted at 02890 829262, e-mail – [info@rentofficer-ni.gov.uk](mailto:info@rentofficer-ni.gov.uk).

A landlord applies to the council for a fitness inspection providing prescribed information and an Environmental Health Officer conducts an inspection, if appropriate. If the tenancy is protected, statutory or unfit then the Environmental Health Officer will send a registration form with the appropriate Certificate of Fitness or Notice of Refusal to the Rent Officer. The Rent Officer determines a rent for the property based on the information contained in the registration form with account being given to:

- the condition of the property
- the terms of the tenancy
- the equivalent Housing Executive rent which would be charged for a similar sized property and
- the local reference rent of a similar sized property would attract in a specific location.
- improvements carried out by the landlord or tenant.

#### **1.4.2 Why is rent control necessary?**

Rent control is necessary in order to tackle unfitness. Where a property is found to be unfit and the Rent Officer imposes rent control, generally a reduced rent, the landlord in order to maximise his rent will carry out the necessary works as specified in the statutory notice.

### 1.4.3 Results gained from rent control

From April 2007 to March 2010, following the introduction of the Private Tenancies (NI) Order 2006, a total of 119 properties have been “made fit” as a direct result of rent control. A breakdown of these figures is shown in the table below.

Year	Protected		Unprotected	
	Unfit	Made Fit	Unfit	Made Fit
2007-2008	50	5	42	15
2008-2009	64	34	24	25
2009 -2010	16	24	28	16
<b>Total</b>	<b>130</b>	<b>63</b>	<b>94</b>	<b>56</b>

As can be seen from this table rent control is having an impact in improving fitness in both the unprotected and the protected sector.

### 1.4.4 Article 31 – Meaning of a “prescribed dwelling house”

A prescribed dwelling house is excluded from requiring a Certificate of Fitness and this Article gives the Department the power to make regulations to define prescribed dwelling houses.

The Prescribed Dwelling House Regulations (NI) 2007 prescribes (exclude) a dwelling-house

- a) Which was constructed after 1<sup>st</sup> January 1945 and before 6<sup>th</sup> November 1956. Article 33 of the Private Tenancies (NI) Order 2006 ([reference 1.4.5](#)) set the date as 6<sup>th</sup> November 1956 but this date was changed to 1<sup>st</sup> January 1945 by regulation to try and target the most unfit properties first. It is the age of the building which is the relevant consideration and not the date of any conversion of the building, for example, where a single house has been converted into flats.

- b) In respect of which a renovation or House in Multiple Occupation grant has been paid, for a period of 10 years from the date of payment of the grant;
- c) Registered as a house in multiple occupation; and
- d) In respect of which a regulated rent certificate was issued, for a period of 10 years from the date of the certificate.

## **CHAPTER II CERTIFICATES OF FITNESS**

### **1.4.5 Article 33 – Landlord’s Application to Have Dwelling- House Inspected**

Provides the basis for the inspection of dwelling-houses which are not prescribed under Article 31 ([reference 1.4.4](#)). This is to ensure that privately rented properties are ‘fit for human habitation’ and, where they are found to be unfit, are subject to rent control and enforcement action taken where appropriate. While the Department can prescribe (exclude) groups of dwellings under Article 31, this article sets out the ‘base line’ of properties which are covered by this provision.

The dwellings that are covered include

- Any property which was built before 6 November 1956. This corresponds with the date after which no protected or statutory tenancy of such a property could be created. By using this date, all protected and statutory tenancies are included in the provision. However, the Prescribed Dwelling House Regulations (NI) 2007 changed this date to 1<sup>st</sup> April 1945 ([reference 1.4.4](#)).
- The private tenancy began on or after the commencement of the Private Tenancies (NI) Order 2006 (1<sup>st</sup> April 2007).

and

- Excludes any dwelling which has been prescribed
- Excludes any dwelling where a certificate of fitness is in existence

The landlord should apply for the fitness inspection within 28 days of the start

of the tenancy. A landlord who intends to let a dwelling-house which requires a certificate of fitness can apply in advance for a fitness inspection. A landlord may apply for a fitness inspection in relation to any tenancy already in existence at the commencement of the Order. This means any tenancy which would have required a fitness inspection if it were to be let on a new tenancy such as for a protected or statutory tenancy.

It is best to encourage the landlord of a protected tenancy to seek a certificate of fitness in order to maximise the rent, provide a better standard of accommodation for the tenant and to ensure the property is on the rent register to protect the security of a protected tenancy.

While there is no time limit for the council to undertake a fitness inspection in legislation, best practice is that fitness inspections are carried out as soon as possible.

A landlord who fails to comply with this Article is guilty of an offence subject to a level 4 fine, a maximum of £2,500.

#### **1.4.6 Article 34 – Landlord’s Application: Ancillary Provisions**

An application for a fitness inspection must be in the form and include such information as may be required. [The Private Tenancies \(Forms etc.\) \(Northern Ireland\) 2007](#) contains the forms to be used to exercise the functions of this Order, including the application for fitness inspection of a dwelling house.

It states that where a tenancy is in existence, the tenant's name must be given. The council must send a copy of the application to the tenant, if any, before considering the application and give the tenant 28 days to tell the council his views on the fitness of the tenancy but this does not require a district council to wait 28 days before inspection. The information supplied to the tenant must contain information of the effect of a Certificate of Fitness or a Notice of Refusal ([reference 1.3](#)).

Information involving the tenant in the process, do not apply where the dwelling in question is not currently let.

#### **1.4.7 Article 35 – Tenant’s Application to have Dwelling-House Inspected**

This Article creates the mechanism whereby a resident tenant can alert the district council to the possibility that the tenancy concerned may be unfit when a Certificate of Fitness is in force. This may be because the property was inspected previously and found to be fit, or because it was deemed fit under Article 33. Note that a prescribed dwelling or a property built after 1 January 1945 is not subject to this provision. This Article is similar in format to Article 33 and 34 ([reference 1.4.5](#) and [1.4.6](#)) and the district council in question must follow similar procedures.

An application for a fitness inspection must be in the form and include such information as may be required, as set out in [the Private Tenancies \(Forms etc.\) \(Northern Ireland\) 2007](#). An application for a fitness inspection must include the name of the landlord, or his agent. The council, before considering the application, must send a copy of the application to the landlord, or his agent. They must also allow him a period of 28 days to respond with any comments on whether or not he considers the dwelling to be fit for human habitation but this does not require a district council to wait 28 days before inspecting. The council must include in the notice given to the landlord or his agent such information or explanation of the effect of a Certificate of Fitness or Notice of Refusal as the Department may make in regulations.

As best practice and at the council’s discretion a tenant application for a fitness inspection should be free of charge.

#### **1.4.8 Article 36 – Functions of the Appropriate District Council**

This Article requires the district council to inspect a dwelling for fitness when it

receives an application from either landlord or tenant and allows the Department to make regulations imposing fees to be charged by councils. A council can refuse an application which is not accompanied by the fee. The fees that district council can charge in respect of an application to conduct an inspection of a dwelling house are set out in the [Prescribed Fees and Charges Regulations \(Northern Ireland\) 2007](#). Schedule 2 of these regulations sets out that the fee for an initial fitness inspection is £50 and the fee for re-inspection is £100.

A district council can refuse a tenant's application under Article 35 unless the tenant gives the council sufficient reason for it to consider that the dwelling may no longer be fit for human habitation. This is to prevent frivolous or vexatious applications from tenants who might use the provision simply to annoy or antagonise their landlord.

Where a district council decides after inspection that the dwelling is fit, it must issue a Certificate of Fitness to the landlord or his agent. Where the council does not consider the dwelling to be fit it must serve a Notice of Refusal informing the landlord of the reasons for its refusal and stating what works are required to make the dwelling fit. A copy of the notice must also be served on the tenant, where there is a tenant in occupation of the dwelling.

The council must send to the rent officer and the Housing Executive a copy of the certificate or notice.

The powers of councils under this Article do not prejudice their powers under Part III of the Order (Notices of Unfitness and Disrepair) or under the Public Health (Ireland) Act 1978 (public health notices).

#### **1.4.9 Article 37 – Appeal to County Court**

Sets out the right of landlord and tenant to appeal to the county court within 21 days of receiving the notice if they object to the Certificate of Fitness or Notice of Refusal issued by the district council.

When deciding on the appeal, the county court:

- (a) must consider the state of the dwelling at the time of the hearing, as well as at the time of the issuing of the Certificate or the Notice of Refusal
- (b) must not impose the costs of the court case on one of the two parties to the case unless it seems fair to do so, taking into account all the circumstances of the case, including the conduct of the district council and of the landlord or tenant.

Where the court decides to order the council to issue a Certificate of Fitness, then the Notice of Refusal in force is cancelled. The effective date of the certificate will be the date of the court order. Where the court decides to order the council to issue a Notice of Refusal, then it is as if the Certificate of Fitness had never been issued. The effective date of the Notice of Refusal will be the same as the date of the Certificate of Fitness previously issued.

The appellant can subsequently appeal to the Court of Appeal if they are dissatisfied with the decision of the county court but only on a point of law.

#### **1.4.10 Article 38 – Cessation of Certificate of Unfitness**

Ensures that where a Notice of Unfitness, Notice of Refusal or Repair Notice has been served on a dwelling on which a Certificate of Fitness has been served or is deemed to have been served, the certificate is cancelled once the period within which a court appeal could be lodged has expired.

A Certificate of Fitness does not cease to have effect because the tenancy of a dwelling has ended.

#### ***Chapter III Tenancies Subject To Rent Control***

#### **1.4.11 Article 40 – Tenancies Subject to Rent Control [\(also see Chapter II Certificates of Fitness\)](#)**

A dwelling is subject to rent control where:

- a) the tenancy is a protected or statutory tenancy
- b) the tenancy is not a protected or statutory tenancy but the tenancy commenced on or after the 1 April 2007

*and*

the dwelling was constructed before 1 January 1945 or was created by the conversion of a building which was constructed before that date

*and*

the dwelling does not meet the fitness standard

A dwelling *does not* meet the appropriate standard of fitness *unless* it is a 'prescribed' dwelling (that is, was either built after 1 January 1945 or is part of the group of prescribed (excluded) dwellings stated in regulations made by the Department) ([reference 1.4.4](#)). In other words, a tenancy is assumed to be *unfit* and subject to rent control unless it is either excluded, or there is a certificate of fitness in operation. It is best to encourage a landlord of a protected tenancy to seek a Certificate of Fitness in order to maximise the rent.

The term 'controlled tenancy' is introduced and defines this as referring to any tenancy which is subject to rent control.

Further information regarding protected and statutory tenancies is contained in [Annex B](#).

### **Property Condition**

With effect from 1 November 2010, the Department has moved away from the use of the terms good, fair and poor to assess the fitness of a property.

Instead, the general condition and state of repair of a property will be determined in accordance with the statutory notice issued. Where the district council has inspected the property, the Rent Officer will use its assessment of the condition of the property as part of the process of determining a rent. The district council will send information to the rent officer when:

- a certificate of fitness is issued for a protected or statutory tenancy indicating fitness;
- a notice of refusal is issued for a protected or statutory tenancy indicating unfitness;
- a notice of refusal is issued on a non-protected tenancy indicating unfitness
- a notice of unfitness is issued on protected or statutory tenancy indicating unfitness;
- a notice of unfitness is issued on a non-protected tenancy indicating unfitness; and;
- a notice of disrepair is issued on a protected or statutory tenancy indicating fitness.

Properties constructed after 1945 which do not require a fitness inspection are deemed to be fit unless a statutory notice is issued indicating unfitness.

#### **1.4.12 Articles 48 to 52 – The Rent Limit**

Establish a rent limit, being the maximum rent which can be charged in respect of controlled tenancies and provide for the offences and means of recoupment applicable in cases of overpayment or overcharging.

### **1.5 Part V – Amendments to the Rent Order**

This Part deals with amendments to the Rent Order.

**Article 56** clarifies which tenancies are protected. Tenancies of dwelling-houses that were protected under the Rent Restriction Acts continue to be protected, as do tenancies of unregistered housing associations that were brought within the scope of the Rent Order by the Housing (Northern Ireland) Order 1983. Tenancies protected under [Article 5 of the Rent Order](#) between

1978 and the introduction of the new Order also retain their status (protected and statutory flowchart and guidance, [Annex C](#)).

**Article 57** states that no new tenancy of any dwelling-house is to be a protected or statutory tenancy. This does not affect the legitimate successor to a protected or statutory tenancy.

**Article 58** clarifies the wording of [Article 12 of the Rent Order](#) (premises with a business use) to state that if it is possible to enter the house used as a dwelling without passing through the non-residential part, the Rent (NI) Order 1978 only applies to the residential part. If this is not possible and entry can only be gained by passing through the non-residential part, the Rent (NI) Order 1978 applies to the entire building.

**Article 59** prevents the assignment of a protected or statutory tenancy, except where a court order is made under a number of provisions pertaining to marriage and partnership breakdowns. It will no longer be possible to assign a protected or statutory tenancy by agreement.

**Article 60** amends [Article 54 of the Rent Order](#). The present definition of harassment states that the acts involved must have been **calculated** to interfere with the tenant's peace or comfort. The amended definition instead refers to actions **likely** to interfere with the peace or comfort of the tenant.

This amendment is in line with the [Protection from Eviction Act 1977](#) which applies in England and Wales. The maximum fine on summary conviction is the statutory maximum, currently £5,000.

**Article 61** amends the succession rights of family members in relation to protected or statutory tenancies. Under the new provisions, a spouse, civil partner or other resident family member will be able to succeed to a protected or statutory tenancy, but only on one occasion, rather than on two occasions as previously allowed. Any existing tenant who succeeded to their tenancy under the current provisions will continue to be a statutory tenant while they remain resident in the dwelling-house.

## 1.6 Part VI – Miscellaneous

**Article 62** empowers the Department to issue directions and guidance to district councils in relation to their functions under the Order. For monitoring purposes district councils are also required to provide such information on the exercise of their functions as the Department may require.

**Articles 63 and 64** enable the Department and the Housing Executive to publish information for the benefit of private landlords and tenants and to collect information in relation to the private rented sector generally.

**Article 65** provides district councils with the power to require the occupier and any person appearing to be the landlord or agent of a dwelling-house to provide written details of their own interest in it and the name and address of any other person known to have an interest.

**Article 66** provides that any notice served on a landlord may be served on the landlord's agent or the person who receives the rent and requires an agent to provide the district council with details of the landlord.

These articles are essential in helping Environmental Health Officers perform their duties as set out in the Order, helpful in gaining access to property, getting the necessary information to undertake fitness inspections, determine if a statement of tenancy terms is necessary etc.

**Article 67** lists those documents which may be served by being sent by ordinary post such as a Certificate of Fitness or a Notice of Refusal.

**Article 68** sets out the fines that may be imposed in respect of offences under the Order. These are set out in more detail in [Annex D](#).

**Article 69** – Under the Defective Premises (Landlord's Liability) Act (Northern Ireland) 2001, landlords of regulated and restricted tenancies were exempted from liability for damage or injuries arising from defects to their properties. This amendment removes this immunity and imposes the same duty of care in

relation to protected and statutory tenancies as applies to any other form of private tenancy.

**Article 70** provides that no agreement may be validly entered into which purports to exclude the provisions of this Order.

**Article 71** provides that the Order applies to Crown property except for that stated in Article 3 ([reference 1.1.1](#)).

**Articles 72 and 73** give the Department power to make regulations for the purposes of the Order and to make such further provision by order as it considers appropriate to carry the Order into effect.

*Schedule 1* sets out the method of appointment of the rent officer, rent assessment panel and constitution of the rent assessment committee. (The administration of the Rent Assessment Panel is moving from the Department for Social Development to the Department of Justice in April 2011.)

*Schedule 2* establishes the procedures to be followed by rent assessment committees in considering determinations of rents by the rent officer.

*Schedule 3* determines the method of calculating the rates payable for a rental period.

*Schedule 4* lists a number of minor and consequential amendments to the Rent Order and other associated legislation.

*Schedule 5* repeals various statutory provisions.

## 2.0 Rent (NI) Order 1978 (The Rent Order)

### 2.1 Summary

The Rent Order was introduced to deal with a declining private rental stock when half the stock was deemed to be unfit. Low levels of rents had led to a lack of repairs and maintenance and further deterioration and neglect. A series of Rent Restriction Acts were in force from the First World War until October 1978 when the Rent Order was introduced and the Rent Restriction Acts were repealed.

The Rent Order established and defined restricted and regulated tenancies (now protected and statutory tenancies ([Annex C](#))) and uncontrolled tenancies and remains the basis of legislation affecting the Private Rented Sector. Amendments have been made by later legislation but the basic principles set out in the 1978 Order remain unchanged. These are:

- Tenants should only be asked to pay higher rents if the dwelling is in a reasonable condition
- Tenants in the private rented sector on low incomes should get the same financial assistance as tenants in the public sector
- Tenants should have greater protection against bad landlords.

In addition the Rent Order set out five basic rights for all private sector tenants:

- The right to a rent book free of charge
- The right to claim Housing Benefit
- 4 weeks notice to quit (strengthened to 4 weeks **written** notice to quit in Private Tenancies (NI) Order 2006)
- Due process of Law
- Freedom from Harassment and Illegal Eviction (strengthened in Private Tenancies (NI) Order 2006)

The most notable affect of the subsequent [Housing \(NI\) Order 1983](#) was to

- Introduce short hold tenancies;
- To extend rent regulation to certain unregistered housing associations; and
- To modify the regulated tenancy standard. The regulated standards were revised again in the 1992 Housing Order and known as the fitness standard. (Annex A)

The Private Tenancies (NI) Order 2006 introduced additional rights ([reference 1.2.1](#), [1.2.2](#) and [1.2.3](#)):

- The right to a statement of tenancy terms
- The right to a basic tenancy term of 6 months where the contract of the tenancy does not set a term
- The right to certain basic repairs

The Private Tenancies (NI) Order 2006 introduced a new system of repair enforcement and rent control over private tenancies in Northern Ireland. It made the fitness of a dwelling the chief factor in determining whether the Rent Officer would impose rent control and it contains provisions which clarify landlord and tenant responsibilities. It repealed large sections of the Rent Order. It has tried, with some success, to improve the property conditions, maintain security of tenure and to recognise the improvements made by both landlords and tenants in the level of rent paid. Unfitness in the private rented sector is at its lowest level, 2.2% in 2009, but it is thought that this may be mainly due to the high levels of new stock in the sector.

The most recent statistics from the 2009 House Condition Survey show that there are now 124,600 private sector lettings (an increase of 43,800 since 2006). On the current rent register there are 1,075 protected and statutory tenancies but there may be many more properties that have not been registered. The Rent Officer for NI is currently undertaking a reconciliation

exercise with the old rent register to find these properties and protect these tenants who have certain legal rights.

## **2.2 Harassment and Illegal Eviction**

It is a basic right of all tenants to be free from harassment and illegal eviction. This right is protected in two ways: by making harassment and illegal eviction a criminal offence and by making it possible for someone who is harassed or illegally evicted to claim damages through the civil court.

Harassment and illegal eviction law is contained in the Rent (NI) Order 1978 and was strengthened by the Private Tenancies (NI) Order 2006 ([reference 1.5](#)).

The law against harassment applies not only to tenants but also to members of their household, and to any lawful occupier residing in the property after a former tenancy has ended. Harassment applies not only to acts carried out by the landlord, but also covers anybody acting on behalf of a landlord and, in some cases, to people who may or may not be connected with a landlord.

The law makes it an offence to:

- Do acts likely to interfere with the peace or comfort of a tenant or anyone living with him or her
- Persistently withdraw or withhold services which the tenant needs to live in the premises as a home.

It is an offence to do any of the things described above if it is likely that they would cause the tenant to leave their home, or stop using part of it, or stop them from doing things that it is their legal right to do. It is also an offence to illegally evict someone from their property.

The district council in whose area a tenancy is located can prosecute or the tenant can act on his own behalf. A person who is convicted by a magistrate

of an offence under the Order may have to pay a maximum fine of £5,000, or be sent to prison for six months, or both. If the case goes to the Crown Court, the punishment can be prison for up to two years, or an unlimited fine, or both.

### **2.2.1 What is Harassment?**

Harassment can take many forms and certain activities may be interpreted as intended to force the tenant from the property.

Harassment may be where the landlord:

- Withdraws services required for the occupation of the house e.g. cutting off gas supply
- Withholds keys or changes locks
- Enters the house when the tenant is not there or without the tenants permission
- Allows the house to get into such a bad state of repair that it becomes dangerous to live in
- Uses threatening behaviour or physical violence
- Makes demands for excessive repairs.

### **2.2.2 Illegal Eviction**

Illegal eviction takes place if a tenant is forced to leave their home by someone who does not have the legal right to do this. A landlord only has the legal right to exclude a tenant from their home in certain circumstances.

To end a tenancy -

- The landlord must serve on the tenant a written notice to quit giving at least 28 days notice
- The tenant is not required to leave the property until the notice expires
- Court proceedings to evict the tenant can only start once the period of notice has ended

- If a tenant does not leave the property at the end of a notice to quit period, they cannot be made to leave until an Order for possession has been granted by the Court.

### **2.2.3 What Rights Do Tenants Have?**

- To be free from harassment and illegal eviction
- The right to a minimum of 28 days written notice to quit
- The right to due process of law, if a tenancy is terminated and the tenant refuses to move, possession can only be recovered through court proceedings.
- The Environmental Health Department has the powers to investigate harassment and illegal eviction. They can prosecute if they believe an offence has been committed.
- If illegally evicted a tenant may get an injunction from the Court to allow them back home.
- A tenant may claim compensation for the losses suffered.
- A tenant can seek advice from an independent advice centre.

### **3.0 Guidance and Advice to assist Councils in the delivery of their statutory responsibilities**

Environmental Health Officers are the experts on implementing the Private Tenancies (NI) Order 2006 with good knowledge on the private rented sector in their area and therefore, have confidence in applying it.

#### **3.1 Identify new tenancies**

Implementing the Private Tenancies Order should not just be the sole responsibility of the Environmental Health officer. Other parts of the Council such as policy development, community development coordinators may have a role to play especially in raising awareness.

Some councils are waiting until the landlord applies for a fitness inspection as he is required to do under the Private Tenancies Order. There are probably a number of landlords who are not applying for Certificates of Fitness when a new tenancy commences due to lack of knowledge of this requirement or because they know their property would not meet the fitness standard.

Councils should be ensuring that landlords in their area are aware of this requirement and identifying new tenancies to make sure the fitness inspection is undertaken. If landlords do not apply when they have been made aware of this requirement, they should be prosecuted under the Order however, prosecution should be a last resort ([reference 1.4.5](#)).

#### **Possible methods to identify new tenancies could be -**

- Ensure this requirement is widely known – information on council website, information provided in local council offices and other council facilities such as leisure centres etc, information provided in council newsletters etc
- Council staff could develop relationships with local community and voluntary groups such as Home Accident Prevention groups, local tenant

groups and organisations, Age Concern, rural groups, gingerbread, mother and toddler groups. They could provide information packs, leaflets etc that DSD can make available which would assist tenants in becoming aware of their rights such as requesting an inspection, rent book etc from landlord or letting Environmental Health Officers know if they had an inspection, have a rent book etc. Community Coordinators or Community Development Officers could be used to disseminate information on the private rented sector.

- Use local knowledge – Councils could use local knowledge to identify new tenancies. This could be gained through their contacts with local groups, liaising with staff in local social security offices, Housing Executive offices and local estate agents and using property websites and “To Let” sections in local newspapers to identify new tenancies and rented accommodation. Local estate agents could provide information to landlords and tenants and inform the council when a property they manage has been let.
- Councils would be very keen on working with the Housing Executive to identify properties on housing benefit. This is not done at present due to data protection but the Department is currently working to explore ways to use this data without breaching data protection rules.
- The Department is currently carrying out awareness raising seminars with landlords and letting agents on the Private Tenancies Order. In addition, councils could hold awareness sessions landlords, solicitors, advice workers, local surestart or community groups etc. If not leaflets and guides could be distributed to these groups / organisations.

If you receive a request for a fitness inspection application, follow up action should be taken if no application is subsequently received.

### **3.2 Improve awareness of the council's role in the private rented sector with landlords and tenants**

Councils have an important role in raising awareness of their functions and the rights and responsibilities of landlords and tenants in the private rented sector.

- Information / articles could be included in Council magazines and publications. Websites should be used to highlight the profile of the private rented sector ([reference 3.4](#)).
- Councils should use press releases and editorials in local newspapers to advertise their role in the private rented sector and the rights and responsibilities of those involved in the sector such as rent books, fitness inspections, harassment and illegal eviction.
- Leaflets could be distributed in council facilities, social security offices and with local community groups such as age concern, gingerbread, surestart etc.
- Councils should seek out the best way to provide information to non nationals and other vulnerable groups in their council area.
- DSD will assist in this through its publications, websites and awareness training sessions with landlords but councils should also be ensuring those in the private rented sector in their local area know of the important role councils play.
- DSD are producing a newsletter, possibly bi-annually, that will issue to landlords that the Department is aware of. We would welcome council's contribution to this, possibly articles and contact details for landlords.

### **3.3 Build relationships with voluntary and community groups to increase awareness of the Order**

It is important to provide information and meet with these groups. Using the available data on the private rented sector as a guide on who lives in the sector, councils could focus on groups with young people and parents e.g., gingerbread, mother and toddler groups. Information such as leaflets could be left in social security offices and housing executive offices. Training could

be given to staff in these offices. Local community coordinators or community development Officers have an important role in this.

### 3.4 Websites

All websites should be up to date and contain information such as examples of rent books, statement of tenancy terms, and advice on illegal harassment and eviction. An analysis of council websites showed that while some councils have comprehensive information on private renting such as information on the Private Tenancies Order, rent books, fitness inspections and links to other websites, many councils have very little or no information. This generally seems to tie in with the councils that are more proactive in implementing the Private Tenancies Order. It can also be quite difficult to find the information, for example, some landlords and tenants may not be aware that the private rented sector is the responsibility of the Environmental Health section of their council.

An example of good website is the Belfast City Council website however having a dedicated private renting link on the homepage would make the information easier to access. Other Councils could replicate this site or link to another website.

The Department would suggest that councils should provide a link on their homepage to NI Direct pages on the private rented sector. This link should be titled the Private Rented Sector and councils could consider providing a short synopsis on information on the private rented sector and then link to NI Direct.

One suggestion would be to have a section for landlords and link to **NI Direct – Letting your property** using the following link

<http://www.nidirect.gov.uk/index/information-and-services/property-and-housing/buying-selling-and-renting-a-home/letting-your-property.htm>

and a section for tenants and link to the following **NI Direct - Private Renting**

<http://www.nidirect.gov.uk/index/information-and-services/property-and-housing/buying-selling-and-renting-a-home/private-renting.htm>

These pages contain all the information a landlord or tenant would need on the private rented sector and is regularly reviewed and updated. This would reduce work for councils IT departments, would ensure accurate and up to date information is provided and ensure consistency between councils. However, it would be necessary to check the link is working regularly.

### **3.5 Sharing Information and Experience between Councils and partner organisations**

Councils should commit to sharing best practice with each other such as examples on how to deal with certain experiences, articles, adverts etc. This guidance is a working document and any improvement, additions, examples of good practice can be shared with the Department and if it is appropriate, it could be included in this guidance.

### **3.6 Extend focus from unfitness to other elements in the private rented sector.**

- Identify unfitness – all council staff have a role, for example, building control officers or community development workers may identify properties through their work.
- Unfitness important but also
  - Rent Book and Statement of Tenancy Terms
  - Illegal harassment and eviction
  - Minimum term and 4 weeks written notice
  - Repairs
- Focus could be extended through awareness raising – Policy officers, IT staff, voluntary and community workers
- **The Private Tenancies Order is not just Environmental Health Officers responsibility**

- Enforce the requirement to issue a rent book and statement of tenancy terms and ensure content is accurate. When council staff such as Environmental Health Officers or community development officers are identifying new tenancies and raising awareness in the private rented sector and when Environmental Health Officers are undertaking fitness inspections, tenants and landlords should be made aware of the above requirements and other aspects of the Private Tenancies Order. This could be achieved by leaving information leaflets or guides on the private rented sector.

### 3.7 Best Practice

Strabane district council has an innovative approach and is issuing information packs using leaflets found on the Department's website to all landlords who have applied for a Certificate of Fitness since 2007 and it is now standard practice that all landlords who apply receive a pack. All councils could distribute leaflets/ information during fitness inspections and in their day to day work with advice agencies, community groups and where they think appropriate.

- It is best to encourage the landlord of a protected tenancy to seek a certificate of fitness in order to maximise the rent, provide a better standard of accommodation for the tenant and to ensure the property is on the rent register to protect the benefits of a protected tenancy ([reference 1.4.11](#)).
- Use a Notice of Refusal, when appropriate, rather than a Notice of Unfitness. A Notice of Refusal is a better tool to encourage landlords to improve their properties ([reference 1.3](#)).
- If a landlord will not apply for a fitness inspection, prosecute landlord for not applying rather than / together with issuing a Notice of Unfitness ([reference 1.3](#)).
- When issuing a Notice of Refusal or Unfitness, list all the work required in a separate additional document, not just work required to make a

property fit. This will ensure a notice of disrepair will not need to be issued and allows for all the necessary work to be completed at one time ([reference 1.3](#)).

- If a request for a fitness inspection is received, follow up action should be taken if no application is received ([reference 3.1](#)).
- A tenant fitness inspection can be free of charge, at discretion of council ([reference 1.4.7](#)).
- A fitness inspection should be undertaken as soon as possible ([reference 1.4.5](#)).
- Depending on the work being undertaken, landlords should be encouraged to provide alternative accommodation for the tenant while the work is being completed ([reference 1.3](#)).
- Use Article 65 to gather details of the landlord and anyone with an interest in the property ([reference 1.6](#)).
- Councils should keep a record (contact details) of all the landlords they deal with.
- Share case studies and examples with other council staff and other councils ([reference 3.5](#)).
- Issue leaflets on private rented sector when undertaking inspections ([reference 3.6](#)).
- Display leaflets at council officers, events etc. ([reference 3.1](#) and [3.2](#)).
- Make best use of websites ([reference 3.4](#)).
- Use editorials, issue press releases in local newspapers to regularly highlight private rented sector ([reference 3.2](#)).
- Use other council staff when appropriate, e.g. Community development officers ([reference 3.3](#)).

#### **4.0 Role of Organisations within the Private Rented Sector (cross reference in document)**

##### **4.1 Department for Social Development – [www.dsdni.gov.uk](http://www.dsdni.gov.uk)**

- Oversight of the sector – Monitor developments in UK and Republic of Ireland, meetings with counterparts
- Policy setting – Building Sound Foundations: A Strategy for the Private Rented Sector (see section 5 for the detail)
- Legislation –1978 Rent Order ([section 2](#)), Private Tenancies (NI) Order 2006 ([section 1](#)), associated subordinate legislation and new legislation required as a result of new policies.
- Guidance – Responding to requests from councils, statutory bodies, tenants, landlords and other partners, replying to correspondence, briefing the Minister.
- Analysis - mainly through data provided through local Councils, detailed quarterly information on all aspects of the legislation, Northern Ireland House Condition Survey, housing benefit figures, Family Resources Survey.

##### **4.2 Rent Officer**

The function of the Rent Officer is to determine an appropriate rent for a tenancy which is found to be unfit and/or which is a protected/statutory tenancy. Having considered all the circumstances of the tenancy, in accordance with Article 42 of the Private Tenancies Order, the Rent Officer will set a rent based on the facts provided.

The Rent Officer has a responsibility to:-

- Be aware of the relevant legislation and regulations which are applicable to the operation of the post of rent officer
- act as directed and required by the Department
- operate and take decisions on an impartial basis

- liaise with Departmental staff who provide administrative support
- liaise with external bodies (e.g. Environmental Health Officers) in relation to the gathering and application of information needed to make accurate decisions.

### **4.3 Councils**

As a result of the Private Tenancies Order, Councils' role in the private rented sector was enhanced, giving them responsibility for carrying out fitness inspections and for preparing Notices of Unfitness and Notices of Disrepair. Councils are also responsible for enforcing other provisions of the Order relating to tenancy management, for example the provision of rent books and the statement of tenancy terms. In summary,

- Identifying Unfitness and Disrepair ([reference 1.3](#))
- Enforcing Private Tenancies Order ([Annex D](#))
- Certificates of Fitness ([reference 1.4.5 – 1.4.10](#))
- Illegal Eviction and Harassment ([reference 2.2](#))
- Ensuring knowledge of rights and responsibilities
- Working with landlords and tenants e.g. helping to resolve disputes.
- Working with DSD to provide information on sector and keep DSD up to date on the work they are undertaking.

Councils are a point of contact for both landlords and tenants in the private rented sector for information, advice and disputes.

### **4.4 Northern Ireland Housing Executive**

- Strategic Housing Authority
- Determines housing need
- Administers housing benefit
- Housing undertake the housing research programme and work in conjunction with Universities to provide data and trends

- Regular exchange of data such as housing benefit figures in each council area.

#### **4.5 Housing Rights Service and Advice Agencies**

- Providing a housing advice line
- Undertaking advocacy and legal representation work on behalf of people with housing problems
- Providing dedicated debt advisers to advise and represent families threatened with repossession
- Delivering skills and knowledge based training on housing and related issues
- Producing information resource materials on housing law and practice in Northern Ireland
- Providing client based comment to influence the development of relevant public policy and legislation
- Providing a public information website on housing and related issues in Northern Ireland ([www.housingadviceNI.org](http://www.housingadviceNI.org))
- Providing a specialist housing advice service within the prisons in NI
- Supporting (in partnership with Citizens Advice and Advice NI) generalist advice agencies to deliver quality housing in their local communities (through the Community Housing Advice Project)
- During 2008/09 Housing Rights Service assisted over 5,000 clients to deal with 17,624 housing issues. 75% of clients reported positive outcomes to their housing issues as a result of its help.
- Housing Rights Service aim to respond to 5,500 enquiries in relation to the private rented sector in 2010/11 to 2013/14.

#### **4.6 Other Government Departments**

- The Department of Finance and Personnel (DFP) is responsible for finance and the use of resources within the civil service

- Land and Property Services (DfP) provide property information e.g. empty property.

## **5.0 Building Sound Foundations: A Strategy for the Private Rented Sector**

Building Sound Foundations: A Strategy for the Private Rented Sector was launched on 24<sup>th</sup> March 2010 by Minister Ritchie. This strategy aims to assist the private rented sector to become a more professional, well managed and service driven sector. Councils have played an important part in developing this strategy and their continuing contribution is essential to the implementation and success of the strategy. This strategy will produce long term and sustainable positive outcomes for both tenants and landlords.

### **5.1 Knowledge and Awareness**

One of the key priorities of this strategy is to put in place a comprehensive knowledge and awareness programme aimed at landlords, tenants, local councils and other stakeholders with an interest and contribution to make to the private rented sector.

DSD has held a number of landlord awareness seminars and council training seminars and will be working with solicitors, letting agents and the PSNI.

DSD has developed practical guides for landlords and tenants and these are available on the DSD website – [www.dsdni.gov.uk/housing](http://www.dsdni.gov.uk/housing)

A list of the information and guides available are contained in [Annex D](#).

#### **Action 1: Knowledge & Awareness**

- a) to ensure the timely and ongoing provision of relevant information to all private landlords and tenants;  
and
- b) to provide tailored guidance and awareness to appropriate council staff.

#### **Timeframe:**

- a) the Department's website at [www.dsdni.gov.uk/housing](http://www.dsdni.gov.uk/housing) includes a wide range of leaflets, factsheets and practical advice which are enhanced and updated at regular intervals. A series of landlord awareness sessions began in December 2009 with 4 further sessions planned for Autumn 2010; and
- b) a rolling programme of awareness sessions to be delivered across council areas during 2010/11. The impact of this awareness alongside compliance and enforcement activity undertaken by councils will be continually monitored.

## **5.2 Impact of Private Tenancies (NI) Order 2006**

A review of the Private Tenancies (NI) Order 2006 was undertaken and the Department identified a number of Articles which needed amended / clarified.

Work is currently underway to merge the rent book and statement of tenancy terms to simplify the information / documents landlords are required to provide to tenants and to make the requirement easier to enforce ([reference 1.2.1](#)).

Article 42 is being moved into subordinate legislation to enable the rent determination process to be more responsive to policy changes and it is hoped this guidance will provide clarification on certain issues arising from the Order. Changes to legislation are included in the Housing (Amendment) (No. 2) Bill currently going through the Assembly process.

### **Action 2: Impact of Private Tenancies (Northern Ireland) Order 2006**

The Department has identified a number of areas which require clarification and has drawn up a programme of enhancements which will strengthen the law and assist councils in their role.

#### **Timeframe:**

Existing primary legislation will be enhanced through the Housing (Amendment) (No. 2) Bill currently progressing through the Assembly. Amendments to sub-ordinate legislation will be in place by autumn 2011.

## 5.3 Tenancy Management

### Landlord Registration

A landlord registration scheme is currently being developed and should be in place by April 2012.

The primary objectives of a register of private landlords are:

- To promote good landlord practice and to prevent bad landlords from working in the sector
- To ensure provision of appropriate advice and assistance to those living and working in the sector
- To provide essential information for local councils in support of their enforcement and compliance activities; and
- To gather relevant data on private landlords and their properties which will underpin policy development and provide a better understanding of the sector.

Key characteristics envisaged in a landlord registration scheme include:

- the registration of all private landlords, and agents acting on their behalf, including details of all their properties available for rent (some exemptions will apply);
- requirement for the landlord to confirm, when registering, that they comply with all statutory requirements governing the private rented sector;
- in return for registration the landlord/agent will be provided with a registration number which must be made available in relation to all transactions related to their private renting activities;
- registration will be renewed (frequency to be determined), and will attract a fee;
- public access to certain aspects of this register;
- a register which will be maintained electronically;
- a register to include only essential data on property/landlord and/or agent;

- registration will involve an agreement to share information between statutory bodies to facilitate effective enforcement;
- all landlords, on registration will be provided with a relevant information pack, with updates being provided on an ongoing basis; and
- non registration and the provision of false/inaccurate data will attract sanctions. (Options under consideration include spot fines, rent control and/or court action, persistent offenders will face more severe penalties including deregistration making it unlawful to continue letting property).

### **Action 3: Tenancy Management**

An appropriate regulatory framework for the sector with landlord registration at its centre will be introduced with major stakeholder's contributing to its development.

#### **Timeframe:**

Introduction of landlord registration will be enabled through the Housing (Amendment (No. 2) Bill currently progressing through the Assembly. A stakeholder group has been established.

## **5.4 Security of Tenure**

In the Housing (Amendment (No. 2) Bill current legislative provisions will be amended as follows:

- Where the length of a tenancy is greater than 5 years and not more than 10 years, the notice to quit period is not valid unless given in writing not less than 8 weeks before the date on which it is to take effect.
- Where the length of a tenancy is greater than 10 years, the notice to quit period is not valid unless given in writing not less than 12 weeks before the date on which it is to take effect.

Current requirements in relation to the need for a court order to regain possession of privately rented properties will continue to apply.

#### **Action 4: Security of Tenure**

The Department will extend the notice to quit period –

- for tenants who have been in their tenancy for longer than five years, the notice to quit period is extended to a minimum of 8 weeks; and
- for tenants who have been in their tenancy for longer than 10 years, the notice to quit period is extended to a minimum of 12 weeks.

#### **Timeframe:**

This is contained in the Housing (Amendment (No. 2) Bill is currently progressing through the Assembly.

### **5.5 Fitness Standard**

The Department will take appropriate action to raise the fitness standard for the private rented sector.

Work will shortly be underway to develop with the main stakeholders, the precise standard which should apply to the private rented sector including the arrangements needed to measure compliance, as well as arrangements needed to enforce the new standard. It is envisaged that the new standard would include thermal comfort and safety measures. There will be an appropriate lead in period for existing tenancies but it is expected that where a new tenancy is to be created after 2015, the property will be required to meet the new fitness standard. This date is subject to the legislative programme.

#### **Action 5: Standard of Fitness**

Higher statutory fitness standard to include thermal comfort and safety measures will be required for all accommodation made available for private renting. Landlords will be expected to demonstrate that their property meets

this standard before a new tenancy is agreed. A stakeholder group will be established to take forward proposals.

**Timeframe:**

Primary legislation will be amended at the next available opportunity. A stakeholder group will be established by autumn 2010.

## **5.6 Improving Accessibility**

Work is currently underway to develop a Tenancy Deposit scheme which will safeguard tenancy deposits and provide a means to allow disputes regarding deposits between landlords and tenants to be dealt with speedily and independently and at minimal cost to either party.

It is not intended that this scheme will make deposits compulsory, but will apply where landlords require a deposit. From a future date, subject to the agreement of the necessary legislation, for every new tenancy where a deposit is required, the landlord must be covered by a tenancy deposit scheme, approved by the Department and which includes a dispute resolution scheme.

### **Action 6: Improving Accessibility**

The Department will introduce a tenancy deposit scheme as a means of safeguarding tenants' deposits and allowing for any disputes which may arise to be dealt with speedily and independently.

In addition, work to scope and address the needs of the most vulnerable individuals and families in securing and sustaining private sector tenancies will get underway immediately through a stakeholders group.

**Timeframe:**

Introduction of a tenancy deposit scheme will be enabled through the Housing (Amendment (No. 2) Bill currently progressing through the Assembly. A

stakeholder group has been established and has agreed to the detail of the scheme.

## **Annex A**

## **Fitness Standard**

### **1. Introduction**

Guidance on the Fitness Standard is provided to the Housing Executive under the Housing (Northern Ireland) 1981. This has been updated to take account of changes in the technical references. The guidance to the Housing Executive in respect of its powers under Part 3 of the 1981 Order is unchanged. The guidance provided here applies to district councils in relation to their powers under the Private Tenancies (Northern Ireland) Order 2006.

- 1.1** This annex gives guidance on the housing fitness standard which is set out in Article 46 of the Housing (Northern Ireland) Order 1981 as amended by the Housing (Northern Ireland) Order 1992. It aims to assist in determining whether a dwelling house is or is not unfit in accordance with the standard.
- 1.2** This guidance is advisory: district councils are asked to have regard to it when applying the standard but must form their opinion in the light of all relevant circumstances.
- 1.3** In this section, unless the context requires otherwise: "the standard" means the housing fitness standard; and "the authority" means either the Northern Ireland Housing Executive or a district council in the exercise of its functions under the Private Tenancies (Northern Ireland) Order 2006.
- 1.4** The guidance in this section, as issued in 2007, reproduces with some minor updating revisions, the guidance in Annex A to DOE circular 1/92. Please note that technical standards are subject to change and references should be checked for accuracy.

### **2. The Fitness Standard**

**Statutory Standard – The Housing (Northern Ireland) Order 1981 as amended by The Housing (Northern Ireland) Order 1992**

**Fitness for human habitation**

**Article 46.**-(1) Subject to subsection (2) below, a house is fit for human habitation for the purposes of this Order unless, in the opinion of the Executive, it fails to meet one or more of the requirements in paragraphs (a) to (i) and, by reason of that failure, is not reasonably suitable for occupation –

- (i) it is structurally stable;
- (ii) it is free from serious disrepair;
- (iii) it is free from dampness prejudicial to the health of the occupants (if any);
- (iv) it has adequate provision for lighting, heating and ventilation;
- (v) it has an adequate piped supply of wholesome water;
- (vi) there are satisfactory facilities in the house for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water;
- (vii) it has a suitably located water-closet for the exclusive use of the occupants (if any);
- (viii) it has, for the exclusive use of the occupants (if any), a suitably located fixed bath or shower and wash-hand basin each of which is provided with a satisfactory supply of hot and cold water; and
- (ix) it has an effective system for the drainage of foul, waste and surface water.

and any reference to a house being unfit for human habitation shall be construed accordingly.

(2) Whether or not a house which is a flat satisfies the requirements in subsection (1), it is unfit for human habitation for the purposes of this Order if, in the opinion of the Executive, the building or a part of the building outside the flat fails to meet one or more of the requirements in paragraphs (a) to (e) and, by reason of that failure, the flat is not reasonably suitable for occupation

–

- (a) the building or part is structurally stable;
- (b) it is free from serious disrepair;
- (c) it is free from dampness;
- (d) it has adequate provision for ventilation; and
- (e) it has an effective system for the draining of foul, waste and surface water.

(3) Subsection (1) applies in relation to a house in multiple occupation with the substitution of a reference to the house for any reference to a house.

(4) Subsection (2) applies in relation to a flat in multiple occupation with the substitution for any reference to a house which is a flat of a reference to the flat in multiple occupation.

(5) The Department may by order amend the provisions of paragraph (1) or paragraph (2) in such manner and to such extent as he considers appropriate; and any such order –

- (a) may contain such transitional and supplementary provisions as the Department considers expedient; and
- (b) shall be made subject to negative resolution.

## **Background Note**

- (i) In deciding whether a dwelling-house is or is not unfit for human habitation, discomfort, inconvenience and inefficiency may be relevant factors but the primary concern should lie in safeguarding the health and safety of any occupants.
- (ii) The extent to which a building presents a risk to health and safety is governed by the nature of the defects present. However, the probability of accidents or damage to health may be increased either by the severity or extent of those defects. The location of defects may also be a material factor, as, in some cases, may the persistence or duration of defects.
- (iii) As a matter of general principle, the fitness standard should be related to the physical characteristics and condition of the house and not to the particular current occupants or way that the house or flat is currently occupied. Thus, fitness under Article 46 does not mean that the house is necessarily "fit" for the present type or number of occupants. For example, it may be fit, but wholly unsuitable for a particular disabled person or be statutorily overcrowded and have unfit and unventilated spaces currently used as bedrooms.
- (iv) That said, to be fit for human habitation a house must by definition, be reasonably suitable for occupation effectively for all household sizes and types of potential occupant who might reasonably be expected to occupy such property. Of the latter, the elderly and young children are typically the most vulnerable to health and safety risks, not only because of their greater susceptibility, but because they tend to spend the greatest time in and around the home.

### **Fitness standard – guidance note**

- 2.1** A house is unfit for human habitation if, in the authority's view, it fails to meet any one of the requirements specified in Article 46(1) or, where it is a flat, it so fails to meet Article 46(1), or the building or a part of the building outside the flat fails to meet any one of the requirements in

Article 46(2), and because of the failure to meet that particular requirement, it is not reasonably suitable for occupation.

- 2.2** In deciding whether a house is or is not unfit, the authority should determine for each of the statutory requirements in turn, whether or not the house is reasonably suitable for occupation because of a failure of that particular matter. In reaching this decision, the authority is asked to have regard to the general guidance note below and, specifically, to the note on each particular requirement. However, in addressing each requirement, the list of items for consideration and the advice given in respect of defects mentioned under each section are not exclusive and all other relevant items will need to be considered.
- 2.3** The order of sections reflects the general need to maintain a conventional inspection procedure, notwithstanding the determination of each requirement individually. Defective items are frequently inter-related and the consideration of, for example, repair and the cause or reason for any disrepair may assist in identifying a failure to meet other requirements, particularly structural stability and dampness. Consequently, a thorough internal and external inspection of the whole house and building should normally be undertaken, before determining which of the individual requirements meet or fail the standard.
- 2.4** In assessing fitness for human habitation, consideration should be given to the condition of all rooms and spaces in the house and of all parts of the fabric of the building and of the fixtures which, were the accommodation rented, would normally be provided by a landlord.
- 2.5** For the purposes of Article 46(1), a house is defined as including "any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it..." Although it is not expected that the poor condition of outbuildings, of boundary walls and of the surfaces of yards and paths will normally be sufficient, in the absence of defects in the house itself, to render it unfit, the condition of these items should also be taken into account in assessing the unfitness of the house, particularly with regard

to the matters of repair, stability and drainage. Where the boundaries to the house are unclear, for example, on farms and small-holdings, only the adjacent outbuildings used for domestic purposes should normally be considered – subject to paragraph 2.7 below.

- 2.6** In determining whether a house which is a flat is or is not unfit, the parts of the building outside the flat must satisfy subsection (2) in addition to the flat itself satisfying subsection (1). Thus, the condition of the structural elements and of the external envelope (roof, walls, etc) of the building and of the hall, stairway, access ways and other common areas, may fall to be considered in addition to that of the particular flat, but only with regard to the matters of repair, stability, dampness, ventilation and drainage. Moreover, these matters should only be considered to the extent that they affect the particular flat in question. Consequently, the failures which fall to be addressed are generally those in the parts of the building directly affecting the flat concerned, for example, those in the particular structure or part of the building accommodating the flat and/or its primary means of access.
- 2.7** All buildings which include commercial premises, whether this be a small front room shop or a large shop or suite of offices below a top floor flat may be approached in the same way as a block of flats, the non-residential parts of the building being considered under Article 46(2) to the extent that they affect the particular house.
- 2.8** Houses in Multiple Occupation (HMOs) come within Article 46 by virtue of subsection (3). The Article 46 standard may be applied to HMOs by considering the whole house including any kitchen and bathroom facilities as "the house", irrespective of any sub-division into household spaces which are not fully self-contained. Flats in multiple occupation come within Article 46 by virtue of subsection (4), and may be similarly considered. Thus, for example, provided at least one WC is present and not shared with the occupants of another separate house, such a house or flat may be deemed to have this amenity "for the exclusive use of the

occupants", notwithstanding that it is shared by different households within that house or flat.

- 2.9** Fitness for human habitation under Article 46 does not mean that the house or flat is fit for multiple occupation, and for this subsequent determination, Article 80 of the Housing (Northern Ireland) Order 1992 applies.
- 2.10** Underground rooms are particularly prone to defects, for example, of repair, dampness inadequate lighting and ventilation, and specific advice is given where appropriate (Dampness 5.4, Ventilation 6.6, Lighting 8.6 and Drainage 12.4 & 12.9). However, whether or not potentially unfit as a separate household space in an HMO or already forming a self-contained flat, underground rooms may, for the purpose of Article 46, be assessed essentially on the same criteria as all other rooms and spaces in a house. As with all rooms and spaces, they should be considered with regard to their intended use in the context of the whole house or flat. Thus, although largely dependent on the particular matter in question, the weight given to some defects may vary with the intended use of the room or space in which they occur. (Ventilation 6.8, Lighting 8.9).
- 2.11** For the purposes of this guidance, "habitable room" may be taken to comprise a room such as a living room, study, dining room or bedroom intended for sitting and sedentary work, eating or sleeping. It should include all such rooms in a basement and attic accessed by fixed stairs and naturally lit, which in an older house may have formed the servants quarters, and any kitchen providing space for sitting or eating over and above that required for the preparation and cooking of food. Conversely, "habitable room" may be taken to exclude a purely working kitchen, for example, of the galley type, a utility room, bathroom or toilet, stairs, hall, landing and other circulation space, and small box room or storeroom intended only for storage, as well as any cellar room, attic space or extension not intended for or subsequently converted to a room for sitting, eating or sleeping.

**2.12** Subject to the location of defects, a house or building may fail to meet a particular requirement, either due to the severity of a defect or by reason of the extent of defects. However, it is only unfit if, because of that failure, it is not reasonably suitable for occupation.

**2.13** In this respect, a house would not normally be expected to be unfit for human habitation where it fails a particular requirement merely because of a minor defect. Such defect might include: a loose or broken socket in an otherwise sound electrical system; an isolated area of damp caused by a raised flower bed covering the damp proof course in an otherwise dry house; temporarily boarded-up windows or screwed up window openings; the odd missing or broken window pane in an otherwise reasonably wind and weatherproof dwelling; slipped or blocked gutters in an otherwise adequate drainage system; and other comparable defects. Nonetheless, the location, duration or consequence of even an apparently minor failure to meet a requirement may be such as to lead an authority to conclude that a house is not reasonably suitable for occupation.

**2.14** Although allowance should be made for any temporary failure to meet a requirement due to ongoing improvement or repair work, the fitness standard may be relevant where the failure is a consequence of the non-completion or poor quality of building work and a reasonable time for the completion or re-execution of such work has elapsed.

**2.15** Generally, the decorative condition of a house or building may be overlooked. Although exterior painting may be necessary for weather protection, lack of it does not by itself render a house unsuitable for occupation, albeit it may lead to relevant items of disrepair. Similarly, the internal decoration is normally unimportant in this context. Obviously, in this respect, caution may be needed in some occupied properties where the excellent state of decoration and furnishings may give a misleading impression of the dwelling's condition, especially when compared with vacant, particularly long-term vacant, properties in poor decorative condition, unfurnished and harbouring dirt and litter.

**2.16** Subject to the re-instatement of the odd fixture or fitting which may have been removed by the outgoing occupants or owners or subsequently broken through vandalism, a vacant dwelling should be judged on its fitness for human habitation on the assumption that it will be occupied in its existing condition. In this respect, the criteria used in judging a vacant dwelling should be generally no different from that of an occupied dwelling.

**2.17** In all cases, an authority should decide whether a house is or is not unfit on the basis of its current condition, having regard to the findings of a recent inspection and any other information laid before it.

### **3. Repair**

#### **Statutory Requirement "it is free from serious disrepair"**

[Housing (Northern Ireland) Order 1981, Article 46(1) (b) and (2) (b)].

#### **Background Note**

- (i)** While most of the requirements in the fitness standard are concerned with the suitability and adequacy of the design and installation of the building elements and fixtures, disrepair is generally concerned with their subsequent deterioration.
- (ii)** Although not usually so critical or extensive as to affect the structural stability of the building, disrepair may lead to parts of the fabric being so insecure as to seriously prejudice the safety of the occupants. For example, externally, a variety of heavy or sharp-edged building elements or parts may be liable to fall from chimneys, roofs, walls or windows during normal weather conditions as a consequence of severe disrepair.
- (iii)** Internally, the main risks are less from falling elements than from serious disrepair further increasing the risk of the occupants or visitors falling, falls generally being the main type of accident in the home. For example, staircases, banisters, internal steps, timber and solid floors

may all become dangerous as a consequence of rotting or broken timber or spalling or loose screeds and floor tiles. There is also a danger of cuts from insecure or broken glazing in windows, doors and partitions.

- (iv) The disrepair of fixtures can also be seriously prejudicial to safety either directly or by constituting a fire hazard. As well as causing deaths directly through electrocution, bad wiring results in numerous house fires each year. Old and neglected wiring, particularly the rubber-covered cable used up to the 1950's, is more likely to be faulty and cause fires. The disrepair of boilers, space and water heaters may also cause a fire hazard or may lead to the emission of toxic gases and vapours, the latter resulting in many accidental deaths in the home each year.
- (v) As well as a risk to safety, extensive disrepair of the fabric and fixtures, particularly in a kitchen and bathroom, may also be prejudicial to health by preventing the walls, floors, other surfaces and fixtures from being effectively cleansed.
- (vi) Finally, disrepair can result in a failure to meet other requirements. For example, severely leaking roofs, eaves, foul or surface water drainage or plumbing may lead to dampness prejudicial to health and/or the rotting of the structural fabric to an extent which threatens stability.

## References

**3.0** In assessing the severity and extent of disrepair, regard may be had to the following standards and regulations for new building work and the maintenance and repair of existing work, but failure to meet these would not, in itself, necessarily constitute grounds for unfitness.

- (1) BS 5262: 1991 *Code of practice for external renderings*.
- (2) BS 5492: 1990 *Code of practice for internal plastering*.
- (3) BS 5534: *Code of practice for slating & tiling*. Part 1: 2003 Design.

- (4) BS 8221: *Code of practice for cleaning and surface repair of buildings*. Part 1: 2000 *Cleaning of natural stone, brick, terracotta and concrete*, Part 2: 2000 *Surface repair of natural stones, brick and terracotta*, Part 3: 1991 *Metals (cleaning only)*.
- (5) BS7671: 2001 *Requirements for electrical installations*. Institution of Electrical Engineers (IEE), 16<sup>th</sup> edition.

### **Repair – guidance note**

- 3.1** A house is unfit for human habitation if, in the authority's view, it is in serious disrepair or, where it is a flat, it or the building or a part of the building outside the flat are in serious disrepair, and for that reason it is not reasonably suitable for occupation.
- 3.2** In deciding whether a house is or is not unfit, the authority should consider whether the house or building is currently free from items of disrepair which either individually or due to their combined effect are so severe and/or extensive that they present a risk to health and safety, or cause serious inconvenience to any occupants.
- 3.3** In reaching a decision, the authority should have regard, amongst other things, to the extent to which by reason of the disrepair.
  - (a) the fabric is liable to failure, dislodgement or spalling or is otherwise prejudicial to safety;
  - (b) the fabric prohibits normal usage of the house, increases the risk of falls or is otherwise prejudicial to health or safety;
  - (c) the fixtures and internal surfaces are incapable of being cleansed;
  - (d) the condition increases the risk of electrocution, toxic fumes, explosion or fire; and
  - (e) the condition increases the risk of water penetration or is otherwise prejudicial to the structural fabric.
- 3.4** Serious disrepair may be due to the severity of one item of disrepair or be due to the combined effect of two or more items. A multiplicity of

items, none of which by themselves would be sufficiently serious to provide grounds for unfitness, may well constitute serious disrepair when combined.

- 3.5** To be satisfactory, any element of the house or building should function in the manner in which it was intended. Externally, chimney pots and bricks, slates and tiles, bargeboards, gutters, down pipes, stacks, parapets, window heads and sills, casements and sashes, glazing, balcony elements and other elements of the building should be generally secure so as to withstand normal weather conditions and normal usage. While the odd slipped slate would not normally be expected to constitute serious disrepair, severe nail sickness affecting a major portion of the roof might do so. Similarly, stone, brick and concrete walling, lintels and sills, etc, should be safe from severe spalling. (Fitness Standard 2.5).
- 3.6** Perished pointing and open jointed masonry may be of major concern, if so severe as to affect the integrity of the brickwork or stonework or to cause penetrating damp prejudicial to health. Similarly the latter may be caused by rendering which is spalling, unbonded or seriously cracked. The rotting of windows and door frames might also constitute grounds for unfitness, if so severe as to render the windows unsafe or if causing the serious deterioration of the structural fabric and/or dampness prejudicial to health. (Fitness Standard 2.15).
- 3.7** Internally, staircases, floor boarding, etc, should be sufficiently secure, free of rot and insect infestation to generally withstand normal domestic loads. Floors and steps, banisters, doors and windows should not be so distorted, rotten, infested or broken as to endanger the safety of any occupants. While the odd loose, rotten or broken floorboard or loose or missing floor tile would not be expected to constitute serious disrepair, the extent or critical location of such defects could constitute grounds for unfitness.
- 3.8** For reasons of hygiene, walls, floors, ceilings and other surfaces as well as fixtures and facilities, particularly in the kitchen and bathroom, should

not be in such extensive disrepair as to prevent these surfaces and facilities from being properly cleaned. (Fitness Standard 2.15, Food Preparation 10.6, Water Closet, etc, 11.5).

- 3.9** Electrical wiring should not be so old and in such disrepair as to cause a major risk of electrocution or fire. However, failure to meet the current IEE regulations, for example, by old electrical wiring would not by itself normally constitute grounds for unfitness, unless the authority properly considers the installation to be dangerous and in need of immediate replacement. Pipes, boilers, space and water heaters and flues should not be broken or in such disrepair as to seriously increase the risk of fire, explosion or the emission of toxic fumes. (Fitness Standard 2.13).
- 3.10** The water supply, foul, waste or surface water drainage systems should not be in such disrepair as to cause persistent leakage, blockage or broken seals which either directly or through problems of dampness presents a risk to the health of any occupants. (Water Supply 9.4 Drainage 12.6)
- 3.11** Any disrepair of the fabric or fixtures should not be so serious as to cause, through persistent water penetration, rotting, warping, rusting or in any other way, the serious deterioration of the structural fabric such as to prejudice the integrity and stability of the building. This is particularly important in the case of dwellings of steel framed or timber framed construction.
- 3.12** Where the house is a flat, the buildings or a part of the building outside the flat should not be in such disrepair as to put the health and safety of any occupants of the flat at risk for example, when gaining access to the flat or using the common facilities. While some forms of disrepair may be less critical in common areas than in the house itself, others such as an unsafe or missing balustrade on a common stairway or access balcony could, depending on the circumstances of the case be sufficient to make a flat unfit.

#### **4. Structural Stability**

##### **Statutory Requirement "is structurally stable"**

[Housing (Northern Ireland) Order 1981, Article 46(1) (a) and (2) (a)].

##### **Background Note**

- (i) The purpose of maintaining structural stability is not only to avoid safety hazards of a catastrophic nature such as death and injury due to collapse but, by preventing severe settlement cracks to avoid health hazards, such as those resulting from cracked sewers, fractured damp-proof courses and water and wind penetration.
- (ii) Structural instability in dwellings may originate either as a result of faults in the design (e.g. faults in the original specification); and/or faults of construction (e.g. resulting from poor materials or poor workmanship on site); and/or faults during use (e.g. caused by overloading, modifications weakening the structure or the deterioration of the fabric); or as the result of subsidence.
- (iii) In domestic buildings, deterioration of materials, original design faults, inappropriate improvements and subsidence have probably contributed to the greatest number of collapses. In traditional housing, some of the more common causes of instability are settlement due to inadequate foundations, ground subsidence or shrinkage, slipped arches and lintels over openings, wall-tie failure, wall and roof spread and the distortion of chimneys resulting from sulphate attack. Internally, a major problem in the older stock is the loss of the bearing of floor joists due to rotting caused by rising or penetrating damp.
- (iv) In buildings above two storeys – often, but not exclusively, of non-traditional construction – there have also been cases of cladding becoming detached or spalling off. These failures are often the result of faulty design or workmanship related to fixing details, but may also be the result of inadequate maintenance or incorrect repair.

## References

**4.0** In assessing the severity and extent of defects in respect of structural stability, regard may be had to the following regulations, standards and code of practice for new building work, but failure to meet those would not, in itself, necessarily constitute grounds for unfitness.

- (1) Building Regulations (Northern Ireland) 2000, *Part D Structure*.
- (2) BS 5268: *Structural use of timber, Part 2: 2002 Code of practice for permissible stress design, materials and workmanship*, Part 3: 1998 *Code of practice for trussed rafter roofs*, Part 5: 1989 *Code of practice for the preservative treatment of structural timber*, Part 6.1: 1996 *Code of practice for timber framed walls. Dwellings not exceeding four storeys*, Part 6.2: 2001 *Code of practice for timber framed walls. Buildings other than dwellings not exceeding four storeys*.
- (3) BS 5628: *Code of practice for use of masonry*, Part 1; 1992 *Structural use of unreinforced masonry*, Part 2: 2000 *Structural use of reinforced and prestressed masonry*, Part 3: 2001 *Materials and components, design and workmanship*.
- (4) BS 6399: *Loading for buildings*, Part 1: 1996 *Code of practice for dead and imposed loads*, Part 2: 1997 *Code of practice for wind loads*, Part 3: 1988 *Code of practice for imposed roof loads*.

## Structural stability – guidance note

**4.1** A house is unfit for human habitation if, in the authority's view, it is structurally unstable or, where it is a flat, it or the building or a part of the building outside the flat are structurally unstable, and for that reason it is not reasonably suitable for occupation.

**4.2** In deciding whether a house is or is not unfit, the authority should consider whether the house or building is currently able to withstand the combined dead, imposed and wind loads to which it is likely to be subjected in the ordinary course of events and when used for the

purposes for which it is intended, and normal ground movement of the sub-soil caused by swelling, shrinkage or freezing; and is free from ongoing movement and the probability of movement which constitutes a threat to any occupants.

**4.3** In reaching a decision, the authority should have regard, amongst other things, to:

- (a) the stability, distortion or spreading of roof structures, chimneys or parapets;
- (b) the stability, distortion and cracking of walls and continuity of wall-ties;
- (c) the structural adequacy and bearing of floors, stairs, ceilings and balconies;
- (d) the distortion, integrity and movement of foundations or footings;  
and
- (e) the integrity of any structural frame and wall panels.

**4.4** Structural stability is concerned with the basic integrity of the building, that is, the stability of the basic structure or major parts of the structure down to such elements as chimneys, parapets, window arches and lintels. The stability of non-structural elements or of small parts of the structure which do not threaten the building's basic integrity, such as isolated areas of spalling brickwork, slipped copings or rotten floor boards, may be considered more relevant to the repair requirements. (Fitness Standard 2.5, Repair 3.5, 3.6 & 3.7)

**4.5** In assessing whether the house, the building or part thereof is capable of withstanding normally combined dead, imposed and wind loads and normal ground movement, where appropriate, regard may be had to the extent to which the structure falls below the provisions set out in current regulations, standards and codes of practice. (References 4.0(1) to (4)).

- 4.6** In most cases, it should be possible to determine this requirement outright. However, assessment of ongoing movement may sometimes require the monitoring of the building over a period of time with “tell-tales”. If the stability of the building is in doubt, it is suggested that an assessment be carried out by a specialist building professional who, in the case of non-traditional or high-rise housing, should be a structural engineer.
- 4.7** Past settlement or movement of a building, even though it may have left cracks and/or floors and walls out of level, is not expected to make a house unfit on the grounds of stability, if the building still remains stable and there is no probability of further movement. However, even where the original movement has ceased, the building may be unstable if the structure has already been weakened to the point where it is no longer capable of withstanding normal loads or normal ground movement. Even if structurally stable, a house may be in serious disrepair on account of such previous movement, for example, because of open structural cracks through external walls or severely sloping floors.  
(Repair 3.7)

## **5. Dampness**

**Statutory Requirement “it is free from dampness prejudicial to the health of the occupants (if any)”**

[Housing (Northern Ireland) Order 1981, Article 46(1) (c) and (2) (c)]

### **Background Note**

- (i) Wet surfaces caused by condensation or rising or penetrating damp, encourage the formation of moulds, and the proliferation of moulds and mites in conditions of high relative humidity is associated with ill health. It has been estimated that some 15 to 20 per cent of the population suffer some form of allergic disease, rhinitis and asthma being the most common, and a proportion of these can be attributed to mite and mould

allergy. A number of recent studies also conclude that damp and mouldy housing has both direct and indirect effects on physical and mental health.

- (ii)** Dampness in clothing and bedding may, by the process of cooling through evaporation, also prejudice the maintenance of body temperatures, particularly in young children and the elderly.
- (iii)** Such problems can be minimised by not allowing the relative humidity in the dwelling to rise above 70 per cent, except for short periods, and by avoiding condensation where possible. However, relative humidity below 40 per cent is also undesirable in view of the possibility of increasing the incidence of respiratory discomfort and infection.
- (iv)** Dampness can also be prejudicial to health and safety through its action on the building fabric. It has the effect of lowering the ambient temperature, both by reducing the insulating capacity of external walls and by using up heat in the process of evaporation. Consequently, a marginal heating system can be rendered inadequate by persistent dampness.
- (v)** The presence of excess moisture can also lead to instability and disrepair through the decay of building materials, for example, the corrosion of metal ties, fixings and reinforcement, perished plasterwork, swelling and warping of timber, etc. Such moisture may be the result of interstitial condensation or of penetrating or rising damp. In the latter, dissolved salts in ground water carried through the structure by capillary action, may be deposited by the process of evaporation on wall surfaces; if hygroscopic, these salts will attract moisture from the air, even at low relative humidities, and cause the wall to become permanently damp and to deteriorate through frost and other damage. In underground rooms dampness may also be transmitted through hydrostatic action.
- (vi)** Moisture levels in timber in excess of 22% will also encourage the germination and growth of wood rotting fungi, and may result in the rotting of structural members.

## References

**5.0** In assessing the severity and extent of defects in respect of dampness, regard may be had to the following regulations, standards and code of practice for new building work, but failure to meet these would not, in itself, necessarily constitute grounds for unfitness.

- (1) Building Regulations, 2000, Part C4 *Resistance to weather and ground moisture*. Part C5 *Condensation*.
- (2) BS 5250: 2002 *Code of practice for control of condensation in buildings*.
- (3) BS 5628: *Code of practice for use of masonry*, Part 3: 2001 *Materials and components, design and workmanship*.
- (4) BS 8200: 1985 *Code of practice for the design of non-load bearing external vertical enclosures of buildings*.
- (5) CP 102: 1973 (sections 2 and 3 only) *Code of practice for protection of buildings against water from the ground*.
- (6) BS 8102: 1990 *Code of practice for protection of structures against water from the ground*.
- (7) BS 8215: 1991 *Code of practice for design of dpc in masonry construction*.
- (8) Thermal Insulation: Avoiding Risks: *BRE report (2002 edition) BR 262*.

## Dampness – guidance note

**5.1** A house is unfit for human habitation if, in the authority's view, it suffers from dampness prejudicial to the health of any occupant or, where it is a flat, it or the building or a part of the building outside the flat suffers from dampness, and for that reason it is not reasonably suitable for occupation.

- 5.2** In deciding whether a house is or is not unfit, the authority should consider whether the house or building is free from the occurrence of rising and penetrating damp, and from persistent condensation and mould growth. It should consider whether the dampness is attributable to the physical characteristics or condition of the building and whether, either directly or through its action on the structural fabric, it may be prejudicial to the health of any occupants.
- 5.3** In reaching a decision, the authority should have regard, amongst other things, to the extent and persistence of:
- (a) rising damp in walls and floors;
  - (b) penetrating damp through roofs, walls or other parts of the building;
  - (c) interstitial condensation in the building fabric (where detectable);
  - (d) surface condensation;
  - (e) any mould growth and mildews.
- 5.4 Dampness** in a dwelling can arise from any one of three principal causes; capillary attraction of ground water into the structure in contact with the ground, i.e., rising damp in the floor slab and walls; penetration of the fabric or its joints by rainwater or melt water from standing snow; and condensation. As well as being prone to rising damp, underground rooms are also liable to dampness caused by hydrostatic action.
- 5.5 Rising** and penetrating damp can generally be attributed to design, inadequate construction or disrepair, and any dampness so caused, if sufficiently serious, may constitute unfitness. The absence or disrepair of a damp-proof course would not, by itself, normally constitute grounds for unfitness, unless it is the cause of rising damp prejudicial to health. (Fitness Standard 2.13).
- 5.6 Dampness** from condensation should only be considered as constituting unfitness, if it is persistent and primarily attributable to the design, construction, modification, standard of amenities or state of repair of the dwelling. However, a dwelling should be able to withstand a degree of moisture generation appropriate to its size, without resulting in such

condensation as to be prejudicial to the health of any occupants.  
(Ventilation 6.2, Heating 7.2),

- 5.7** The extent, location, frequency and persistence of any dampness, of whatever cause, will be particularly important in determining whether this is prejudicial to health. For example, a small patch of damp caused by defective pointing around a window reveal or door jamb or by a defective rainwater pipe is due to disrepair rather than inherent dampness. But, the premises should be free from the latter both during and following periods of reasonably severe and prolonged inclement weather. In this respect, obviously the authority should take care not be misled by temporarily adequate conditions, or to make false assumptions on the cause of dampness, when inspecting during a prolonged dry spell.

## **6. Ventilation**

### **Statutory Requirement "it has adequate provision for ventilation"**

[Housing (Northern Ireland) Order 1981, Article 46(1) (d) and (2) (d)].

### **Background Note**

- (i)** Ventilation is essential for the removal of pollutants which are directly or indirectly injurious to health. These pollutants may be generated within the building; by the occupants' cooking, bathing, smoking, etc, by fuel combustion, by off-gassing from furniture and fittings, and by the materials and moisture used in the building process; or may be generated outside the building.
- (ii)** The principal domestic pollutants are:
  - (a)** metabolic products, such as water vapour, carbon dioxide and body odour, which are not health problems in themselves but may be indicative of other problems;
  - (b)** combustion products, such as carbon monoxide and nitrogen dioxide, which may be produced by defective domestic heating and

cooking appliances. Without adequate ventilation, the former can accumulate in concentrations sufficient to cause death, while the latter is thought to contribute to respiratory infections;

- (c) organic compounds such as wood preservatives and formaldehyde used in particle board and foamed insulation, the latter of which can cause irritation; and
  - (d) particulate material, which may be non-viable as in asbestos, or viable, for example, mites, moulds, yeasts and fungi, and which are an established risk to health.
- (iii) Of these, the most acute risk comes from carbon monoxide poisoning generated by incomplete combustion in unflued stoves and portable heaters and open flued combustion equipment. There are also serious long term risks from asbestos fibres and possibly tobacco smoke and formaldehyde and wood preservatives, while nitrogen dioxide and the micro-organisms, moulds, etc, can contribute to long term respiratory diseases. In addition high concentrations of water vapour may result in condensation, leading to mould growth and the other health issues discussed under dampness.

## References

**6.0** In assessing the severity and extent of defects in respect of ventilation, regard may be had to the following regulations and standards for new building work, but failure to meet these would not, in itself, necessarily constitute grounds for unfitness.

- (1) Building Regulations (Northern Ireland) 2000, Part K2 Means of ventilation. Part C2. Preparation of site and resistance to dangerous and harmful substances. Part L2. Heat-producing appliances and associated construction. Part L3. Prevention of smoke emission. Part L4. LPG fixed installations. (The Part L References are to cross refer with guidance note 6.3(e).

- (2) BS 5250: 2002 *Code of practice for control of condensation in buildings.*
- (3) BS 5440: *Installation and maintenance of flues and ventilation of gas appliances of rated input not exceeding 70 kilowatts,* Part 1: 2000 Specification for installation and maintenance of flues, Part 2: 2000 Specification for installation and maintenance of ventilation for gas appliances.
- (4) BS 5925: 1991 *Code of practice for the design of buildings, ventilation principles and designing for natural ventilation.*

## **Ventilation – guidance note**

- 6.1** A house is unfit for human habitation if, in the authority's view, it has inadequate provision for ventilation or, where it is a flat, it or the building or a part of the building outside the flat have inadequate provision for ventilation, and for that reason it is not reasonably suitable for occupation.
- 6.2** In deciding whether a house is or is not unfit, the authority should consider whether the house or building currently has means of ventilation which under normal conditions are capable of restricting the accumulation of such moisture (which could lead to serious condensation and mould growth, despite adequate heating) and pollutants, originating within the building or curtilage, as would otherwise become a hazard to the health of any occupants.
- 6.3** In reaching a decision, the authority should have regard, amongst other things, to:
  - (a) the size and location of the openable parts of windows and doors;
  - (b) the size and location of louvres or other ventilators;
  - (c) the position of window openings, doors and ventilators in relation to external obstructions;

- (d) the efficiency of any mechanical ventilation; and
- (e) the type and level of ventilation to unflued and (non-balanced) flued combustion appliances.

**6.4** Room ventilation may be achieved by means of ventilation openings direct to the external air, such as the openable parts of a window, a louvre, progressively openable ventilator or an external door, or by means of a mechanical system. In the case of natural ventilation, the ventilator should be capable of being opened to such an extent that fresh air will readily circulate to all parts of the room. However, to control the amount of ventilation and avoid prejudicing security, some part of the ventilation should normally be provided by means other than by just an external side-hung door. (Fitness Standard 2.13)

**6.5** As a general guide, the total size of ventilation openings in a habitable room and naturally ventilated kitchen, bathroom or WC compartment should not be less than 1/20<sup>th</sup> of the floor area. In living rooms and kitchens, some part of the opening should normally be at least 1.75m above floor level. (Fitness Standard 2.11)

**6.6** Where the free circulation of air may be restricted, such as in a room in a habitable basement, the floor of which is more than 0.9 metres below the surface of the adjacent street or ground, natural ventilation should be direct to the external air. In such situations, there should normally be an unobstructed space immediately outside the window opening which extends the entire width of the window or more and has a depth of not less than 0.6 metres measured from the external wall or not less than 0.3 metres in the case of a bay window with side lights. It is also to be expected that the average height of such rooms from floor to ceiling should be sufficient to encourage the free convection of air within the room. (Fitness Standard 2.10 Lighting 8.6)

- 6.7** Generally, ventilation by mechanical means should provide at least one air change per hour in habitable rooms and preferably three per hour in bathrooms, WC compartments and kitchens. (Repair 3.9)
- 6.8** Rooms which fail the criteria in paragraphs 6.5 to 6.7 above may be defective in ventilation. However, in deciding whether the house is or is not thereby reasonably suitable for occupation, the severity and extent of the problem should be considered. Thus, a dwelling having defective ventilation in the main living room or kitchen or in the majority of other habitable rooms might be deemed unfit whereas, for example, a marginal defect in a relatively minor room would not by itself normally be expected to constitute sufficient grounds for unfitness.
- 6.9** The ventilation of non-habitable spaces in the building, such as cellars, sub-floor spaces, lofts and other roof spaces should not be so inadequate as to cause severe condensation which is prejudicial to the structural fabric. However, it is not expected that inadequate ventilation of such spaces would normally be sufficient, by itself, to render a house unfit.
- 6.10** Fixed heat producing combustion appliances (including cookers) taking air from the interior of the dwelling should have provision for adequate ventilation to ensure complete combustion of fuels and the full discharge of the products of combustion.
- 6.11** While satisfying provision for ventilation, the level of any permanent ventilation should not be so great as to cause excessive heat loss. (Heating 7.7)

## 7. Heating

### **Statutory Requirement "it has adequate provision for heating"**

[Housing (Northern Ireland) Order 1981, Article 46(1) (d)].

#### **Background Note**

- (i) Why adequate provision for heating is important in terms of health is well documented in reports such as, Mant DC and Muir Gray JA "Building regulations and health", BRE 1986, on which the following extracts are based.
- (ii) According to the "Mant Report", the most common causes of death in winter are stroke, heart disease, bronchitis, pneumonia, hypothermia and accidents. The mortality rates for the diseases referred to above all increase when the ambient temperature declines. In this respect, the evidence for a causal relationship is greatly strengthened by experimental evidence of a biological link between the underlying pathology of these diseases and low temperatures.
- (iii) Hypothermia depends on the core temperature of the body. The elderly appear able to maintain a core temperature when the air temperature is 12 deg C or above, but a significant fall has been shown to occur after two hours at a temperature of 9 deg C. Below 12 deg C there is also an increased strain on the cardiovascular system and these changes increase the risk of myocardial infarction and stroke.
- (iv) Between 12 and 15 deg C, there is evidence to suggest that there persists a potential, albeit less acute, risk to health. There also remains an indirect risk in the high incidence of condensation and mould growth which is associated with low temperatures as well as with poor ventilation. Above 16 deg C there is no longer a significant health risk, but discomfort is generally felt when the temperature falls below 18 deg C, particularly when sitting or engaged in sedentary occupations.

- (v) The implication from the above review is that the provision of heating in a main living room should be such as to enable a temperature of 18 deg C to be generally achieved when the outside temperature is -1 deg C (the design temperature for heating systems) so as to prevent both severe discomfort and the maintenance of the 16 deg C health threshold on the, not uncommon, occasions when the outside temperature falls below -1 deg C.
  
- (vi) In addition, provisions for heating to achieve an equivalent temperature of 16 deg C in other habitable rooms would generally help to avoid serious condensation and mould growth in bedrooms and elsewhere, and allow a background temperature above 12 deg C during extreme cold weather.
  
- (vii) Space heaters may also present a safety risk, both in terms of fire and the emission of toxic fumes. Each year, heating appliances cause several thousand domestic fires and result in many deaths, electric heaters leading to half of these fatalities. Because of their greater liability to be overturned, to be located close to furniture and fabrics and to be accidentally covered, portable appliances are a particular risk in this respect, especially in well frequented rooms such as a general living room. Portable unflued combustion heaters as well as being a potential fire risk may, if defective, also present a risk in terms of explosion and carbon monoxide poisoning. (Background note 6(iii)).

## References

- 7.0** In assessing the severity and extent of defects in respect of heating, regard may be had to the following regulations and standards for building work, but failure to meet these would not, in itself, necessarily constitute grounds for unfitness.
- (1) BS 5449: *Specification for forced circulation hot water central heating systems for domestic premises, Part 1: 1990.*

- (2) BS 5871: 2005 *Specification for the installation and maintenance of gas fires, convector heaters, fire/back boilers and decorative fuel effect gas appliances. Parts 1, 2 and 3.*
- (3) BS 8211: *Energy efficiency in housing Part 1: 1988 Code of practice for energy efficient refurbishment of housing.*
- (4) BS 8303: 1994 *Installation of domestic heating and cooking appliances burning solid mineral fuels. Parts 1, 2 and 3.*
- (5) BREDEM 12 – Domestic Energy Model: model description 2001 update.
- (6) Thermal insulation: Avoiding risk BRE Report (2002 Edition) BR 262.
- (7) Building Regulations (Northern Ireland) 2000, Part F – *Conservation of fuel and power.*

## **Heating – guidance note**

- 7.1** A house is unfit for human habitation if in the authority's view it has inadequate provision for heating, and for that reason it is not reasonably suitable for occupation.
- 7.2** In deciding whether a house is or is not unfit, the authority should consider whether the house currently has for heating a main "living" room, provision for fixed heating, capable of efficiently maintaining the room generally at a temperature of 18 deg C or more than the outside temperature is –1 deg C, and for the other main habitable rooms, provision for heating capable of maintaining an equivalent temperature of 16 deg C or more. The authority should also have regard to whether the construction and condition of the house prevents excessive heat loss and whether the overall level of provision for heating, when combined with adequate ventilation, is sufficient to prevent both condensation and mould growth prejudicial to health.
- 7.3** In reaching a decision, the authority should have regard, amongst other things, to:

- (a) the presence, type and age of provision for heating in the main “living” room;
- (b) the presence, type and age of provision for heating elsewhere;
- (c) the capacity of the electrical installation and number and location of outlets;
- (d) the insulating properties of the building fabric; and
- (e) the extent of air leakage through the construction.

**7.4** For heating at least one main room intended for general living, there should be provision for fixed heating of sufficient capacity to maintain, after a warming up period, most of the room at a temperature of 18 deg C or more when the outside temperature is –1 deg C. This provision should normally comprise a reasonably efficient and safely designed and installed fixed heating source or, failing this, a safe and fully connected gas point at a working flue, or a safe electrical installation and space suitable for a fixed electric heating appliance. In the latter case, there should be a suitably located (13 amp minimum) outlet which may reasonably be dedicated solely to the appliance. (Fitness Standard 2.16, Repair 3.9)

**7.5** For heating each other main habitable room, there should be provision for heating of sufficient capacity to maintain most of the room at a temperature of 16 deg C or more when the outside temperature is minus 1 deg C. This should normally comprise either a fixed heating source, or a gas point at a working flue, or a safe electric installation suitable for a fixed or portable electric heating appliance. For the latter, there should be a (13 amp minimum) outlet available from an installation of sufficient capacity not to give rise to serious overloading, bearing in mind the size of the house and provision in other rooms. (repair 3.9)

**7.6** Generally, the provision may either take the form of a central heating system with, for example, a radiator, under floor or ceiling element or heating outlet for ducted warm-air, or may take the form of, or provide a ready connection for, a direct heating source such as fire, stove,

convector, fan heater, storage heaters etc. Fixed heating may be taken to include those provisions, for example, storage heaters, which regardless of whether actually fixed, are effectively non-portable and stable. (Repair 3.9, Ventilation 6.10)

- 7.7** The construction of the dwelling and its condition should not be such as to result in excessive heat loss. In this respect, a dwelling is not expected to be fully insulated to modern standards, but should be constructed of materials and in a manner to give an adequate basic level of thermal insulation. Thus, while solid 228mm (9 inch) walls would normally be considered adequate, a house with large areas of 115mm (4.5 inch) brick external wall or constructed of uninsulated or poorly insulated metal or asbestos cement sheeting may well fail in this respect. Similarly, a house which is in such condition that it is not generally wind and weatherproof could fail to meet the requirement. (Fitness Standard 2.13, Ventilation 6.11)
- 7.8** In assessing whether the provision for heating is adequate, the capacity, type and age of the provision should be considered in relation to the size of the room and likely heat loss. For example, while provision only for an open solid fuel fire would not automatically be expected to fail to meet the requirement, it may do so if located in a house which, by reason of its characteristics, construction or condition, has a relatively high heat loss. In a similar situation, provision only for a small electric fire may also fail to meet the requirement. In most cases it should be possible to determine this matter outright. However, an objective assessment of any particular situation may be gained by using one of a number of commercially available energy models, based on the Building Research Establishment's domestic energy model BREDEM. (Reference 7.0(5)).
- 7.9** Overall, the heating provided should be sufficient, when combined with adequate ventilation, to prevent severe or pervasive condensation and mould growth. In this respect, although possibly of adequate capacity, a fixed paraffin appliance, if this were the main provision, may fail to meet

this requirement and cause the failure of that relating to dampness because of problems of condensation and mould growth. (Dampness 5.6).

## **8. Lighting**

### **Statutory Requirement "it has adequate provision for lighting"**

[Housing (Northern Ireland) Order 1981, Article 46 (1) (d)].

### **Background Note**

- (i)** Natural lighting has three important effects on human beings; it influences body rhythms such as sleep patterns, ovulation and hormone secretion; it affects performance, alertness and mood; and exerts a direct physiological effect on skin, including the synthesis of Vitamin D (which is necessary for healthy bones). Consequently, artificial lighting may not be an adequate substitute for natural lighting in many areas of the dwelling.
- (ii)** Poor lighting, whether natural or artificial may be a cause of eye strain. Indirectly, both may be a health hazard if they hamper the proper cleaning of the dwelling, particularly in kitchens and bathrooms.
- (iii)** Both are a safety hazard because of the connection between poor lighting levels and accidents in the home, particularly on staircases and at changes of level. (Stairs/steps are the feature of the home most frequently involved in fatal accidents.) Because advancing age increases the time taken to adapt to changing lighting levels, providing higher lighting levels on landings etc, without increasing the general level of lighting in the house could merely result in increased glare, particularly, for the elderly.
- (iv)** In the case of artificial lighting, its ability to minimise accidents will be largely negated if there are not also suitably located light switches.

## References

**8.0** In assessing the severity and extent of defects in respect of natural and artificial lighting, regard may be had to the following codes of practice and guidance, although failure to meet these would not, in itself, necessarily constitute grounds for unfitness.

- (1) *BS8206: Lighting for buildings, Part 2: 1992 Code of practice for day lighting.*
- (2) *CIBSE: Code for lighting 2004.*
- (3) *Littlefair, P.J. Site layout for daylight and sunlight; a guide to good practice. BRE Report 209, 2005.*

## Lighting – guidance note

**8.1** A house is unfit for human habitation if in the authority's view it has inadequate provision for lighting, and for that reason it is not reasonably suitable for occupation.

**8.2** In deciding whether a house is or is not unfit, the authority should consider whether the house currently has provision for sufficient natural lighting in habitable rooms to enable the normal activities of a household to be carried out, safely and conveniently, without the use of artificial light during normal daytime conditions. It should also consider whether the house has provision for sufficient artificial lighting in all habitable rooms, kitchens, bathrooms, WC and circulation spaces, to enable the normal activities of a household to be carried out, safely and conveniently and to permit the normal passage of the occupant without increasing the risk of accident.

**8.3** In reaching a decision, the authority should have regard, amongst other things to:

- (a) the size and location of windows;

- (b) the size and proximity of external obstructions;
- (c) the provision and location of light fittings in all rooms;
- (d) the provision, location and type of light switches; and
- (e) the internal arrangement relative to the lighting provisions.

**8.4** Habitable rooms should have sufficient natural lighting to enable normal domestic activities to be undertaken without strain during the main hours of daylight without requiring artificial light, unless the day is particularly overcast. However, allowance should be made for particularly dirty or inappropriate glazing, heavy curtaining and any boarding up, for overgrown external foliage or other similar obstructions under the control of the occupant or landlord. (Fitness Standard 2.11)

**8.5** The extent of natural lighting will generally depend on the size and height of windows, their location in the room and the size and proximity of external obstructions. As a general guide, the area of glazing in a habitable room should be not less than 1/10<sup>th</sup> of the floor area, and some part of the window should normally be at least 1.75m above floor level.

**8.6** Where there is a continuous solid external obstruction within some 3 metres of the window or windows of a habitable room, for example, as may occur outside a basement, there should normally be a glazed area totalling not less than 1/10<sup>th</sup> of the floor area of the room, above the points on the window or windows from which a line can be drawn upwards at a vertical angle of 30 degrees with the horizontal to pass the top of the obstruction. For this “rule of thumb” calculation, a bay window with side lights may be treated as a flat window, equal in area to the sum of the front and side lights and situated at a distance from the face of the wall from which the bay projects equal to half the maximum depth of the projection. (Fitness Standard 2.10)

**8.7** All habitable rooms, kitchens, bathrooms and WC compartments should have at least one ceiling or suitably located wall lighting outlet with the capacity to enable normal domestic activities to be undertaken without

strain after dark. Circulation spaces should also have at least one ceiling or suitably located wall lighting outlet with the capacity of minimising accidents and allowing effective cleaning. With respect to potential accidents, particular care should be given to the location of lighting outlets in relation to stairs and changes of level, especially if there are items of bad arrangement such as steep and winding stairs or trip steps.

**8.8** A safe working light fitting is to be generally expected in occupied properties, but in vacant dwellings and rooms a safe working installation, for example, terminating at a ceiling rose, may be considered acceptable. Generally, light switches should be present and fixed and should be conveniently located near the entrances to rooms and circulations spaces. Bathrooms should preferably have ceiling pull switches (disregarding any missing cords) or a wall switch outside the room. (Fitness Standard 2.16, Repair 3.9)

**8.9** In determining whether a dwelling fails the fitness standard on the grounds of inadequate provision for lighting, the standard of the provision for natural lighting and that for artificial lighting may be considered separately but both in terms of the severity or extent of defects. For example, a dwelling which is severely defective in natural lighting in the main living room or in a majority of other habitable rooms, or in provision for artificial lighting in the kitchen or on the stairs might be deemed unfit. Conversely, defective natural lighting in a minor bedroom, no light fitting in a small box room or a bathroom with a wall switch would not alone be expected to constitute sufficient grounds for a finding of unfitness.

## **9. Water Supply**

**Statutory Requirement** "it has an adequate piped supply of wholesome water"

[Housing (Northern Ireland) Order 1981, Article 46(1) (e)].

### **Background Note**

- (i)** Since the beginning of public health legislation, it has been accepted that some diseases are spread by contaminated water and that the water supply must be wholesome. Under the Water and Sewerage Services (NI) Order 1973, where the Department for Regional Development supplies water for domestic or food production purposes, it must be wholesome. Standards of wholesomeness are defined in the Water Supply (Water Quality) Regulations (Northern Ireland) 2002 (“the Regulations”). The Regulations fully incorporate the requirements of the European Commission’s Drinking Water Directive 98/83/EC (the “Directive”) relating to the quality of water intended for human consumption and, for certain parameters, more stringent UK national Standards. The Department for Regional Development is responsible only for water quality within the public supply system.
- (ii)** 99% of households in Northern Ireland have a public water supply. The remaining 1% are served from private supplies piped, for example, from streams, wells and boreholes. Such supplies are prone to contamination by human or farm sewage or in other ways.
- (iii)** Even where connected to a public supply, water may become contaminated within the dwelling and its curtilage. The poor siting and disrepair of water and drainage pipes within a property may lead to contamination of the former. Water, especially that with a high acidity, can dissolve the heavy metals, particularly lead, used for water pipes. Toxic materials can thereby become absorbed in the drinking water and be ingested by occupants.
- (iv)** Inadequately covered cold water cisterns can be polluted by the droppings and rotting bodies of birds, small animals and insects.
- (v)** An inadequate supply in terms of continuity may present risks to safety as well as health. If the supply is intermittent or has a particularly low rate of flow, it may so fail to replenish the cold water tank as to prejudice

the safety of any boiler or water heater. Such a flow might also encourage the use of a supply from a tank, rather than a direct supply, for drinking and the preparation of food.

## References

**9.0** In assessing the severity and extent of defects in respect of the water supply, regard may be had to the following regulations, byelaws, EC Directive and standard for new building work, but failure to meet these would not, in itself, necessarily constitute grounds for unfitness.

- (1) The Water and Sewerage Services (Northern Ireland) Order 2002.
- (2) The Water Supply (Water Quality) Regulations (Northern Ireland) 2002
- (3) The Private Water Supplies Regulations (Northern Ireland) 1994
- (4) EC Directive (98/83/EC) on the quality of water intended for human consumption
- (5) BS 6700: 1997 *Specification for design, installation, testing and maintenance of services supplying water for domestic use within buildings and their cartilages.*

## Water supply – guidance note

**9.1** A house is unfit for human habitation if, in the authority's view, it has an inadequate piped supply of wholesome water, and for that reason it is not reasonably suitable for occupation.

**9.2** In deciding whether a house is or is not unfit, the authority should consider whether the house is currently connected to a public supply or a private supply that is wholesome, has, normally, a continuous and adequate rate of supply, has piping designed, installed and in a condition so as not to contaminate the supply; and has an outlet conveniently located above the kitchen sink.

- 9.3** In reaching a decision, the authority should have regard, amongst other things, to:
- (a) the presence inside the dwelling of a mains supply or wholesome private supply;
  - (b) the siting of this supply relative to the kitchen sink;
  - (c) the continuity and rate of flow of the supply;
  - (d) the contamination of the supply by the ingress of foul, waste, surface or ground water or otherwise; and
  - (e) the contamination of the supply by metals dissolved from the piping.
- 9.4** Where the quality of supply to the house is suspect, bacteriological and chemical testing may be undertaken. The supply to the tap may also need to be tested for contamination emanating in the dwelling or curtilage, for example, from lead piping.
- 9.5** The water used for drinking and the preparation of food should be drawn from an outlet located inside the house. This should comprise a tap, which may be a mixer tap, above the kitchen sink but located to prevent backflow.
- 9.6** To reduce the risks to health, the drinking water supply should normally come directly from the rising main. However, where a storage cistern supplies drinking water to the kitchen tap, the cistern should have a non-airtight close fitting cover which excludes light and insects, or be otherwise designed to comply with current regulations. To reduce the risk of organic contamination, it is also preferable if the cold water supply pipe does not run fully and continuously adjacent to hot water pipes or heating appliances, although this defect alone would not normally be expected to result in a finding of unfitness. (Reference 9.0(2))
- 9.7** Under working conditions, the drinking water supply should have a sufficiently continuous and adequate rate of flow to safely replenish water tanks, boilers and hot water cylinders to prevent hazards resulting

from overheating. At the kitchen tap, it need not necessarily run full bore but should not be so slow running as to discourage its use for drinking and the preparation of food. Although not required to meet design standards for new installations, the extent to which the flow is inadequate may be assessed having regard to the current standards. (Reference 9.0(3))

## **10. Facilities for the Preparation and Cooking of Food**

**Statutory Requirement** "there are satisfactory facilities in the house for the preparation and cooking of food, including a sink with a satisfactory supply of hot and cold water"

[Housing (Northern Ireland) Order 1981, Article 46(1) (f)]

### **Background Note**

- (i) The preparation and cooking of food is potentially more dangerous than any other activity which goes on at home. The most frequent home accidents are falls, burns and scalds and a high proportion of such accidents happen while meals are being prepared, served or eaten.
- (ii) Most accidents in the kitchen occur in connection with the cooker, the electrical installation, or out-of-reach storage and can be minimised by a safe layout and adequate circulation space within the kitchen. The location of the cooking appliance in relation to doorways and work surfaces is of particular importance in this respect.
- (iii) Work surfaces of adequate area, depth and height are important in terms of safety in providing space, out of the reach of small children, to receive hot pans and dishes straight from the cooker prior to serving, and in providing similarly safe areas for the operation of potentially dangerous kitchen appliances.

- (iv) As well as reducing the risk of accidents, the design of kitchens can also reduce the risk to health. Many cases of domestic food poisoning arise from the cross contamination of cooked and uncooked foods. This risk is minimised if there is adequate provision for work surfaces for food preparation and if such surfaces and sinks can be readily and properly cleaned.

## References

**10.0** In assessing the severity and extent of defects in respect of the facilities for the preparation and cooking of food, regard may be had to the following standards and guidance for new building work, but failure to meet these would not, in itself, necessarily constitute grounds for unfitness.

- (1) BS 5482: 2005 *Domestic butane and propane gas-burning installations*, Part 1: Installation at permanent dwellings.
- (2) BS 6172: 2004 *Installation of domestic gas cooking appliances (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> family gases)*.
- (3) BS 8303: 1995 *Installation and maintenance of domestic heating and cooking appliances burning solid mineral fuels:*  
*Part 1: Specification for design of installation*  
*Part 2: Specification for installing and commissioning on site*  
*Part 3: Recommendations for design and on site installation*
- (4) BRE housing design handbook, BRE Report 253, 1993
- (5) DOE Design Bulletin 24 - HMSO 1972

## Food preparation – guidance note

**10.1** A house is unfit for human habitation if, in the authority's view, it lacks satisfactory facilities for the preparation and cooking of food, and for that reason it is not reasonably suitable for occupation.

**10.2** In deciding whether a house is or is not unfit, the authority should consider whether the house currently has a sink designed and installed

so as not to be prejudicial to health and fitted with satisfactory supplies of hot water and cold drinking water. It should consider whether the house has provision for an adequate work surface or surfaces for the preparation of food and for the cooking of food, provision for a gas or electric cooker or, failing this, a suitable fixed solid fuel or oil fired cooking appliance; the sink, work surfaces and cooker or cooker space being located within reasonable proximity in a kitchen or kitchen area and sited so as not to be prejudicial to safety.

**10.3** In reaching a decision, the authority should have regard amongst other things, to:-

- (a) the presence in the dwelling of a fixed kitchen sink with a drainer and piped hot and cold water, worktop or worktops and cooker points;
- (b) (b) the suitability of the sink and worktops for cleaning;
- (c) the adequacy of the hot water supply;
- (d) the size of the sink, worktops and cooker space; and
- (e) the dimensions and layout of the kitchen or kitchen area.

**10.4** It is advised that the kitchen sink should comprise a fixed impervious bowl properly connected through an adequate sized trap to the drains and that there should be at least one drainer (independently or as a combined unit) or second bowl, each of reasonable size.

**10.5** The sink should have an adequate piped supply of hot water, which may be from a central source or from a stored and instantaneous unit water heater capable of providing an adequate supply of hot water. It should also have an adequate supply of cold drinking water, normally piped directly from the rising main. The hot water system should be designed, installed and in a condition so as not to be prejudicial to safety. (Repair 3.9, Ventilation 6.10, Water Supply 9.6).

- 10.6** For the preparation of food, the kitchen or kitchen area should have a secure fixed work surface or the space for such surfaces, appropriate to the size of the dwelling. The work surface or surfaces and adjacent walls, floors and ceilings should be generally non-porous and reasonably smooth such that they can be cleaned effectively. There should be an adequate number of suitably located electrical power points for the safe use of kitchen appliances. (Fitness Standard 2.16, Repair 3.8 & 3.9)
- 10.7** For installation of a cooker, the kitchen should have either an electric (30amp) cooker point, a mains gas point or failing this, a bottled gas installation or a solid fuel or oil fired range permanently connected to a flue. Space or spaces should be available adjacent to the cooker points of sufficient size to take an oven and hob, either in a combined or split level unit. Space and points only suitable for a 'portable' worktop cooker or camping stove would not be acceptable as the only cooking provision in the kitchen. (Ventilation 6.10, References 10.0(1), (2) & (3)).
- 10.8** The dimensions of the kitchen or kitchen area should be sufficient for the safe provision of all the necessary facilities. The location of the cooker space should be safe, particularly in relation to doorways, and there should be sufficient floor space for retrieving items from the oven and for the safe circulation of occupants generally. In short, while a merely inconvenient layout would not be expected to constitute grounds for unfitness, a dangerous layout could. (Reference 10.0(4))

## **11. Water Closet, Washbasin and Bath or Shower**

### **Statutory Requirement**

**"it has a suitably located water closet for the exclusive use of the occupants (if any)"**

**"it has for the exclusive use of the occupants (if any), a suitably located fixed bath or shower and wash-hand basin each of which is provided with a satisfactory supply of hot and cold water"**

[Housing (Northern Ireland) Order 1981, Article 46(1) (g) and (1) (h)]

### **Background Note**

- (i)** A water closet (WC) accessed through the open air even if the access is covered, may be prejudicial to health, particularly for the elderly in winter. It is also more prone to freezing.
- (ii)** Research shows that there is significant health risks associated with the use of sanitary conveniences, but that these can be minimised if precautions such as hand washing and cleansing of the sanitary accommodation are properly carried out.
- (iii)** Hand washing is the crucial factor in reducing the spread of infection, and the two most important factors in the location of a water closet are the necessity of hand washing and the potential risk of overflow. The risk from direct communications of WCs with kitchens derives from the possibility of WC users washing their hands in sinks used for food preparation as well as from the airborne contamination of kitchen surfaces.
- (iv)** Bathing or showering is required for the efficient cleansing of the body and removal of body odours. It is directly beneficial to health in two main areas; namely skin disease associated with bacteria and lice and the need for bathing for people who are ill.
- (v)** The compartmenting within the house and location of WCs, hand basins and baths is also important for maintaining basic personal privacy.
- (vi)** Both central heating and unit hot water heaters can be potentially dangerous if not properly designed, installed and maintained, the main risks being the emission of toxic fumes, explosion, scalding and electrocution.

### **References**

**11.0** In assessing the severity and extent of defects in respect of the water closet, wash basin, bath or shower and supply of hot and cold water, regard may be had to the following regulations, standards and guidance for new building work, but failure to meet these would not, in itself, necessarily constitute grounds for unfitness.

- (1) Building Regulations (Northern Ireland) 2000, Part P: *Sanitary appliances and unvented hot water storage systems*
- (2) BS 6465 Part 1: 2006 Sanitary installations *Code of practice for the design of sanitary and associated appliances.*
- (3) BS 6465 Part 3: 2006 *Sanitary installations. Code of Practice for the selection, installation and maintenance of sanitary and associated appliances.*
- (4) BRE *housing design handbook*, BRE Report 253, 1993.
- (5) DOE Design Bulletin 24: Spaces in the Home: Part 1 Bathroom and WCs. HMSO, 1972

### **Water closet, etc, guidance note**

**11.1** A house is unfit for human habitation if, in the authority's view, it lacks for the exclusive use of any occupants, a suitably located water closet or a suitably located fixed bath or shower and wash hand basin, each with a satisfactory supply of hot and cold water, and for that reason it is not reasonably suitable for occupation.

**11.2** In deciding whether a house is or is not unfit, the authority should consider whether the house currently has a water closet, for the exclusive use of any occupants, designed, installed and suitably located inside so as to be readily accessible and not prejudicial to health. The authority should also have regard to whether the house has a wash hand basin and fixed bath or shower, for the exclusive use of any occupants, designed, installed and suitably located inside so as to be readily accessible and not prejudicial to health, and fitted with satisfactory supplies of hot and cold water.

**11.3** In reaching a decision, the authority should have regard, amongst other things, to:-

- (a) the presence in the dwelling of these amenities;
- (b) the capability of the amenities to cleanse (WC only) and to be cleansed;
- (c) the adequacy of hot and cold water supplies;
- (d) the siting of the WC in relation to the wash basin and to food preparation and storage areas; and
- (e) the compartmenting and accessibility of the amenities.

**11.4** A water closet, wash hand basin (other than the kitchen sink) and bath or shower should be present and located normally inside the habitable part of the house that is behind the main external doors of the particular house or flat. It is to be expected that in all circumstances they should be capable of being reached under cover without entering the outside air.

**11.5** The water closet, wash basin and bath or shower should have a surface which is reasonably smooth and non-absorbent and capable of being readily cleansed. The flushing apparatus fitted to the WC should be capable of cleansing the receptacle effectively. (Fitness Standard 2.16, Repair 3.8).

**11.6** The washbasin and bath or shower should each have a piped supply of hot water, which may be from a central source or from a plumbed-in unit water heater capable of maintaining a constant flow of hot water, and a piped supply of cold water. The hot water system should be designed and installed so as not to be prejudicial to safety and both the hot and cold supplies should be adequate for their purpose. (Repair 3.9, Ventilation 6.10).

**11.7** The WC should be provided in a naturally or artificially ventilated and lit bathroom or separate WC compartment, and should not open directly

and immediately onto a space intended for the storage and preparation of food. The washbasin should normally be located in or near the room containing the WC. A bath or shower should be provided in a bathroom or shower room. The WC, washbasin and bath should be readily accessible at all times without unduly compromising the privacy of the occupants. (Ventilation 6.5 & 6.7, Lighting 8.7).

## **12. Drainage of Foul, Waste and Surface Water**

**Statutory Requirement** "an effective system for the draining of foul, waste and surface water"

[Housing (Northern Ireland) Order 1981, Article 46(1) (i) and (2) (e)]

### **Background Note**

- (i)** The potential hazard from foul and waste water drainage is considerable, particularly from the parts of the system located above ground, and the basic requirement is that drainage pipes should neither leak nor easily block. Given that this requirement is met, any health risk can be effectively eliminated by the use of water traps and ventilation of stack pipes.
- (ii)** Except where part of a combined system, the potential health hazard from surface water drainage is less acute. Rainwater down pipes and gutters, particularly cast-iron ware, can become a safety hazard if not properly fixed and maintained.
- (iii)** The main concern regarding inadequate or leaking surface water drainage is that it can easily result in penetrating damp and rapidly accelerate the deterioration of structural and other elements of the building fabric, and thus lead to potentially more serious health and safety problems. Inadequate surface water drainage can also lead to the direct flooding of underground rooms and, in winter, result in sheets of ice on yards and paths which are a safety hazard.

## References

**12.0** In assessing the severity and extent of defects in respect of the drainage of foul, waste and surface water, regard may be had to the following regulations and standards for new building work, but failure to meet these would not, in itself, necessarily constitute grounds for unfitness.

- (1) Building Regulations (Northern Ireland) 2000, *Part N: Drainage*.
- (2) BS 5572: 1994 *Code of practice for sanitary pipework*.
- (3) BS 6297: 1983 *Code of practice for design and installation of small sewage treatment works and cesspools*.
- (4) BS 6367: 1983 *Code of practice for drainage of roofs and paved areas*.
- (5) BS 8301: 1985 *Code of practice for building drainage*.

## Drainage - guidance note

**12.1** A house is unfit for human habitation if, in the authority's view, it lacks an effective system for the draining of foul, waste and surface water or, where it is a flat, it or the building or a part of the building outside the flat lack such a system, and for that reason it is not reasonably suitable for occupation.

**12.2** In deciding whether a house is or is not unfit, the authority should consider whether the house or building currently has an effective system, both above and below ground, for the draining of foul, waste and surface water, which is designed, installed and in a condition so as not to be prejudicial to the health and safety of any occupants or to the structural fabric.

**12.3** In reaching this decision, the authority should have regard, amongst other things, to:-

- (a) the coverage and capacity of the system or systems;
- (b) their susceptibility to blockage or leakage;

- (c) the provisions for clearing blockages;
- (d) the seals preventing foul air entering the dwelling and ventilation of the system (foul and waste water only); and
- (e) the siting, design and installation of any private outfall.

**12.4** The capacity of the foul and waste water drainage system as determined by the size and gradient of the pipes, should be large enough to carry at any point the expected flow, as governed by the type, number and grouping of appliances. Foul and waste water pipes, particularly inside the building, for example, those passing through underground and other rooms, should be fully watertight and gastight.

**12.5** A water closet should discharge through a trap and branch pipe into a gravity fed discharge stack or drain. However, a macerator and pump small bore drainage system may be considered acceptable if the occupants also have access to a gravity discharge WC within the building or curtilage. The sink, wash basin and bath or shower should each discharge into an authorised drainage system through a trap and branch pipe to a discharge stack or, where located on the ground floor, into a gully or direct to a drain.

**12.6** All points of discharge into a foul or waste water system should be fitted with a water seal (trap) to prevent foul air from the system entering the house under working conditions. To prevent water seals in the traps being lost by pressures which can develop in the system, discharge stacks should be ventilated. To clear any blockages, access points should normally be provided to lengths of pipe which cannot be reached from any other part of the system. (Repair 3.10).

**12.7** Foul and waste water should discharge into a suitable outfall such as an authorised public or private sewage system, septic tank, cesspool or settlement tank which has a capacity capable of dealing with the effluent. Cesspools, septic tanks and settlement tanks should be sited so as not to contaminate water supplies and so as to permit satisfactory access for

emptying. They should be constructed and in a condition so as to be impervious to leakage or ingress of subsoil water, to have adequate ventilation and to be otherwise non prejudicial to health and safety. The condition of any private outfall outside the curtilage should be considered, whether or not this is shared with other dwellings.

**12.8** The capacity of the surface water drainage system as determined by the size and gradient of rainwater gutters and pipes should be large enough to carry at any point the expected flow, as governed by the areas to be drained and an intensity of rainfall typical for the locality. In addition, the gradient of roofs and yards should normally be adequate to ensure proper draining of surface water away from the building. (Fitness Standard 2.13).

**12.9** Rainwater pipes should discharge into a drain or gully but may discharge to another gutter or onto another surface or yard if it is well drained. The system should be such as to prevent flooding, particularly of underground and other rooms, and the formation in winter of sheet ice on yards or paths which because of its extent and location presents a serious risk to the safety of any occupants. Where a surface water system would not be expected, for example, on thatched roofs or for small roofs and balconies, the design should be such that the rainwater is discharged clear of the building. (Repair 3.10).

**12.10** Surface water should normally discharge into a suitable outfall such as surface water or combined sewer, soak away, a storage container or water course, which is of adequate capacity. Any down pipe which discharges into a combined foul and surface water system should do so through a trap.

**Introduction**

1. The Private Tenancies (Northern Ireland) Order 2006 makes provision for district councils to issue a *notice of unfitness* in relation to a privately rented house which fails to meet the fitness standard. This power is to be exercised in cooperation with the Housing Executive and this guidance sets out the fitness standard and approach which should be taken in relation to this process.
2. Councils are empowered to issue a *notice of disrepair* in relation to a private tenancy which is fit, but in disrepair. Guidance on the operation of this function is also provided.
3. In this guidance, DSD means the Department for Social Development (NI) and “the Executive” means the Northern Ireland Housing Executive. The “1981 Order” or the “principal Order” means the Housing (NI) Order 1981 and the “1992 Order” means the Housing (NI) Order 1992. “The PTO” means the Private Tenancies (NI) Order 2006.
4. This guidance lists a number of factors that district councils should take into account when deciding whether or not to recommend the issue of a notice of unfitness or notice of disrepair. These factors do not have any specific weighting. Decisions will need to be based on the individual circumstances relevant to the property being considered and therefore different factors will have different weight in different cases. The list is not exhaustive and councils should consider any other factors that may be relevant. It should, however, be prepared to demonstrate that it has given consideration to each of the factors listed in the guidance in addition to any other factors.

## **ACTION ON INDIVIDUAL UNFIT PROPERTIES: THE RESPECTIVE ROLES OF THE HOUSING EXECUTIVE AND DISTRICT COUNCILS**

5. The Housing (Northern Ireland) Order 1981, which deals with the issuing of repair notices, closing and demolition orders, provides a choice of action in respect of individual unfit properties. The Housing Executive will continue to have these options available to it in relation to individual dwellings and to areas of housing. Individual action or inclusion in a redevelopment or clearance area will continue to be assessed in order to determine the most satisfactory course of action for each particular unfit dwelling. In reaching a decision, however, the Executive must have regard to the DSD's Code of Guidance.
  
6. As mentioned above, while an assessment of the costs and benefits of proposed action still remains an important feature, this forms only one of the elements that may need to be taken into account by the Housing Executive. Overall plans for the area in which the property is situated may influence decisions and district councils must consult with the Housing Executive to ascertain what plans the Executive has for the area in which a particular private tenancy is located.

## **NOTICE OF UNFITNESS**

7. The serving of a notice of unfitness is a power available to district councils which applies only to tenanted privately rented properties. Where the district council has decided that serving a notice of unfitness is the most satisfactory course of action, it is required to consult the Housing Executive. Where the Executive advises the district council that it intends to exercise any of its development functions (i.e. to serve a repair notice or deferred action notice, to make a closing or demolition order, or to include the dwelling in a redevelopment area), or to include the dwelling in question in a group repair scheme within a period of 12 months, the district council must take no further action.

8. Discretion to issue a notice of unfitness in respect of any works that would not be carried out as part of a group repair scheme will remain. If a group repair scheme including the unfit house is not approved within a 12-month period, the Executive must advise the district council in order that a notice of unfitness can be served. Similarly, the district council must be advised by the Executive if it decides not to prepare a group repair scheme or if the owner of the property refuses to participate or, for some other reason, the property is not included in the scheme.
9. Where an unfit house is a HMO, the district council should liaise with the Housing Executive's HMO unit, which operates under separate legislation on unfitness (the Housing (Northern Ireland) Order 1992) applicable to such properties.
10. The work which may be specified in a notice of unfitness is not confined to works of repair. The notice will specify the works required to make the house fit and may thus include works of improvement.

## **ENFORCEMENT ACTION**

11. It is an offence to fail to comply with a notice of unfitness within a specified time. Conviction for this offence may lead to a fine not exceeding level 4 on the standard scale. Conviction does not remove the requirement of compliance with the notice and a further offence is committed after 14 days of the initial conviction if the notice is not complied with. If for whatever reason the owner of the privately rented dwelling in question does not comply with a notice of unfitness, the district council has the power to carry out the works at the expense of this person with costs being recoverable as a civil debt and/or as a statutory charge against the property concerned.

## **POWER TO CHARGE FOR ENFORCEMENT ACTION**

12. While not formally part of this statutory guidance, district councils' attention is drawn to Article 25(4) ([reference 1.3.7](#)) of the PTO. This

provides them with the power to make a reasonable charge as a means of recovering certain expenses incurred in serving a notice of unfitness or notice of disrepair.

## **APPEALS**

- 13.** The PTO includes provision for an appeal against a notice of unfitness. An appellant may contend that the service of a demolition or closing order would have been a more satisfactory course of action. The Court, in deciding an appeal brought on these grounds, must have regard to this guidance.

## **NOTICE OF FITNESS - CODE OF GUIDANCE FOR DEALING WITH UNFIT PRIVATE TENANCIES**

1. The guidance in this code is given by the DSD under the PTO. It is given to district councils and they are required to have regard to it in deciding for the purposes of Article 18 of the PTO whether the "most appropriate course of action" in respect of premises that have been identified as unfit for human habitation is serving a notice of unfitness.

### **Links with Housing Executive enforcement powers**

2. The powers available to district councils under the PTO relate specifically to dwelling houses which are let under private tenancies. The powers which continue to be available to the Housing Executive under the Housing (Northern Ireland) Order 1981 ("the 1981 Order") relate to all houses regardless of the status of any occupants.
3. Article 18 of the PTO requires district councils to consult the Housing Executive if they are considering issuing a notice of unfitness or notice of disrepair in order to ascertain if the Executive intends to exercise any of its development powers in respect of the dwelling house in question. These powers permit the Housing Executive to tackle unfitness through the following statutory powers:

- **Repair**

That is, the service of a repair notice in accordance with Article 41 of the 1981 Order; or

- **Deferred action**

That is, the service of a deferred action notice in accordance with section 111 of The Housing (Northern Ireland) Order 2003 ("the 2003 Order") or the renewal of a deferred action notice in accordance with Article 114 of the 2003 Order; or

- **Closure**

That is, the making of a closing order in accordance with Article 38 of the 1981 Order; or

- **Demolition**

That is, the making of a demolition order in accordance with Article 35 of the 1981 Order; or

- **Clearance**

That is, the declaration of the area in which the premises are situated to be a clearance area in accordance with Article 32 of the 1981 Order.

4. Under Article 46A of the 1981 Order, the Housing Executive is also required to have regard to guidance given by the DSD in respect of these powers. In summary, this guidance requires the Housing Executive, when deciding the most satisfactory course of action under its powers provided in the 1981 Order, to have regard to a wide range of factors. Wherever possible, decisions should be made within the context of its development functions, taking account of the views and circumstances of those directly affected by any decision taken. Part of this will involve making an assessment of the effect of various courses of action in the context of the area in which the unfit premises are situated. The size of the area and the number of properties the Housing Executive chooses to take into account for this assessment will depend on the premises concerned and the characteristics of the associated housing stock. In some cases it may be sufficient to assess the immediate vicinity of the premises. In others, consideration of several streets or a neighbourhood may be appropriate. There will also be cases where such assessments prove impracticable e.g. where the unfitness is so serious that immediate action is required.
5. Where the Housing Executive advises the district council that it intends to exercise its development powers, or that it intends to include the property in question in a Group Repair Scheme within a period of 12 months, the district council shall take no further action.

6. Where the Housing Executive has previously advised a district council of its intention to take enforcement action or to include the property in a Group Repair Scheme within 12 months, it must also advise the council of any change in these plans in order that the council may review the situation and consider whether or not to issue a notice of unfitness or notice of disrepair.

### **Identifying the need for action**

7. The housing fitness standard (Article 41 of the Housing (Northern Ireland) Order 1981 as amended by the Housing (Northern Ireland) Order 1992) sets out the standard for determining whether premises are fit for human habitation. [Annex A](#) sets out the elements of the fitness standard and provides guidance on interpretation to assist in ensuring consistency of approach.
8. On identifying an unfit private tenancy a district council has the discretion to issue a notice of unfitness where it considers that this is the "most appropriate course of action" to deal with it.

### **Pre-formal enforcement action procedures**

9. While formal fitness enforcement action is a necessary and important part of the enforcement process, it should generally be viewed as a last resort. As a matter of good practice where a district council identifies premises that are unfit, they should consider the case for drawing this informally to the attention of the owner or landlord as the case may be.
10. This process is similar to that required in England and Wales under the Housing (Fitness Enforcement Procedures) Order 1996 and is designed to improve the transparency of the enforcement process. The issuing of an informal notification is designed to assist district councils to reach sensible decisions with owners and landlords by giving them the right to

make representations. It should also help reduce the need to take lengthy and costly formal enforcement action.

11. When a district council has expressed an informal opinion, they should be prepared to provide a written explanation if requested by the owner or landlord. Such written explanation should include a description of:
  - the remedial action which the council considers necessary and the appropriate timescale for completion;
  - why the council considers remedial action needs to be taken and the nature of the enforcement action the council might be required to take in the future if the repair is not remedied;
  - the right to make representations to the council before formal enforcement action is taken and the right of appeal against such action.
  
12. District councils are required to act in the ways specified in the PTO, but the PTO provides that they are not prevented from taking immediate enforcement action in any case where such action appears to them to be necessary. This broad exemption recognises the need for district councils to be able to take immediate enforcement action, and that such decisions can only properly be taken by a district council in the light of the circumstances of each case. While those circumstances will inevitably vary, an example where immediate action might be warranted includes where a council considers there is imminent risk to the health and safety of the occupants of the premises.

### **Formal action**

13. Whatever the circumstances, the district council has to satisfy itself that a fitness enforcement decision represents the most appropriate course of action. They should also be able to provide reasons for that decision and be able to demonstrate that they have had regard to the guidance in reaching a decision.

## **Relevant factors in deciding the most appropriate course of action**

- 14.** The factors a district council will need to consider in arriving at a decision on the most appropriate course of action will vary according to the particular circumstances. The most important ones are set out in the paragraphs that follow. The factors do not have any specific weighting, nor do they represent an exhaustive list. Decisions will need to be based on individual circumstances and councils will need to take into account any other factors they consider relevant. In all cases a district council needs to be able to demonstrate that it has given consideration to the factors listed in this Guidance alongside any other matters it deems relevant in reaching a decision on the most appropriate course of action.
- 15.** Councils should make a point of clearly explaining decisions to those against whom they take enforcement action. Such practice will be an important factor in helping to avoid frivolous appeals or appeals which might arise from a misunderstanding of the reasons for the council's decision.
- 16.** In deciding whether to serve a notice of unfitness under Article 18 of the PTO a district council should, in particular, consider the physical condition of the dwelling, for example:

  - whether it constitutes an immediate health and safety risk to the occupants,
  - whether it is practicable to repair / improve it or whether the structure is completely outworn,
  - the life expectancy of the premises if made fit.

## **Power to charge for fitness enforcement**

- 17.** District councils' attention is drawn to Article 26 of the PTO ([reference 1.3.8](#)). This provides them with the power to make a reasonable charge as a means of recovering certain expenses incurred in:

- determining whether to serve a notice of unfitness (under Article 18 of the Order),
  - identifying the works to be specified in the notice, and
  - serving the notice.
- 18.** In deciding whether to exercise their powers to make a charge and the level of any charge they decide to make, councils should take into account the circumstances of the person or persons against whom enforcement action is being taken.

## NOTICE OF DISREPAIR - CODE OF GUIDANCE FOR DEALING WITH PRIVATE TENANCIES WHICH ARE FIT BUT IN DISREPAIR

1. This guidance is given by the DSD under Article 62 of the PTO. It is given to district councils and they are required to have regard to it in deciding for the purposes of Article 19 of the PTO ([reference 1.3.1](#)) whether or not to serve a notice of disrepair in respect of a dwelling which is fit for human habitation but in a state of disrepair.

### Identifying the need for action

2. The main difference between a notice of unfitness (served under Article 18 of the PTO) and a notice of disrepair (served under Article 19 of the PTO) is that a notice of unfitness is served on an unfit house whereas a notice of disrepair is served on a house which is fit for human habitation but which is in a state of disrepair.
3. The housing fitness standard (Article 41 of the Housing (Northern Ireland) Order 1981 as amended by the Housing (Northern Ireland) Order 1992) sets out the standard for determining whether premises are fit for human habitation. [Annex A](#) of this guidance manual sets out the elements of the fitness standard and provides guidance on interpretation to assist in ensuring consistency of approach.

### Definitions

#### 4. ***“substantial repairs”***

This should be taken as referring to one or more larger items or a combination of smaller ones; the provision is designed to cope with cumulative deterioration of a property rather than the rectification of inevitable minor defects. It also does not apply to improvements, which are defined in the Housing Orders 1981 – 2003 as ‘including alteration and enlargement’.

**5. “age, character and locality”**

This wording is drawn from *Proudfoot v Hart* (1890) where the judgement given established the acceptability of differing standards. The standard to be applied is defined as relating to “the occupation of a reasonable minded tenant of the class who would be likely to take [such a property]”.

**6. “to interfere materially with the personal comfort”**

This provision was introduced to address the decision in *National Coal Board v Thorpe* (1976) which found that the relevant public health legislation did not cover electrical wiring in a poor or dangerous condition. The definition should be interpreted in the light of individual circumstances although the wording clearly demands that the serious disrepair in question must be such that it is impacting to a substantial extent on the tenant of the dwelling.

**7. “owner”**

In relation to the powers provided to district councils under Part III of the PTO, the term “owner” is defined as the person who receives or is entitled to receive the rent for the dwelling. The definition thus clearly refers to any agent of the landlord to whom the tenant pays rent.

**Pre-formal enforcement action procedures**

**8.** While formal fitness enforcement action is a necessary and important part of the enforcement process, it should generally be viewed as a last resort. As a matter of good practice where a district council identifies premises that are fit for human habitation but in disrepair, it should consider the case for drawing this informally to the attention of the owner or landlord.

**9.** This process is similar to that required in England and Wales under the Housing (Fitness Enforcement Procedures) Order 1996 and is designed to improve the transparency of the enforcement process. The issuing of an informal notification is designed to assist district councils to reach

sensible decisions with owners and landlords by giving them the right to make representations. It should also help reduce the need to take lengthy and costly formal enforcement action.

- 10.** When a district council has expressed an informal opinion, they should be prepared to provide a written explanation if requested by the owner or landlord. Such written explanation should include a description of:
  - the remedial action which the council considers necessary and the appropriate timescale for completion,
  - why the council considers remedial action needs to be taken and the nature of the enforcement action the council might be required to take in the future if the repair is not remedied,
  - the right to make representations to the council before formal enforcement action is taken and the right of appeal against such action.
  
- 11.** District councils are required to act in the ways specified in the PTO, but the PTO provides that they are not prevented from taking immediate enforcement action in any case where such action appears to them to be necessary. This broad exemption recognises the need for district councils to be able to take immediate enforcement action, and that such decisions can only properly be taken by a district council in the light of the circumstances of each case. While those circumstances will inevitably vary, an example where immediate action might be warranted includes where a council considers there is imminent risk to the health and safety of the occupants of the premises.

### **Formal action**

- 12.** Whatever the circumstances, the district council has to satisfy itself that the service of a notice of disrepair represents the most appropriate course of action. They should also be able to provide reasons for that

decision and be able to demonstrate that they have had regard to the guidance in reaching a decision.

### **Relevant factors in deciding the most appropriate course of action**

13. The factors a district council will need to consider in arriving at a decision on the most appropriate course of action will vary according to the particular circumstances. The most important ones are set out in the paragraphs that follow. The factors do not have any specific weighting, nor do they represent an exhaustive list. Decisions will need to be based on individual circumstances and councils will need to take into account any other factors they consider relevant. In all cases a district council needs to be able to demonstrate that it has given consideration to the factors listed in this guidance alongside any other matters it deems relevant in reaching a decision on the most appropriate course of action. Councils should make a point of clearly explaining decisions to those against whom they take enforcement action. Such practice will be an important factor in helping to avoid frivolous appeals or appeals which might arise from a misunderstanding of the reasons for the council's decision.
  
14. In deciding whether to serve a notice of disrepair under Article 19 of the PTO ([reference 1.3.1](#)) a district council should in particular consider:
  - a. The fact that if the repairs were not done, the property would sink further into disrepair and possibly become unfit;
  - b. The fact that the property is unsafe or may become so.

### **Power to charge for fitness enforcement**

15. While not formally part of the statutory guidance which forms this code, district councils' attention is drawn to Article 26 of the PTO ([reference 1.3.8](#)). This provides them with the power to make a reasonable charge as a means of recovering certain expenses incurred in:

- determining whether to serve a notice of disrepair (under Article 19 of the Order);
  - identifying the works to be specified in the notice; and
  - serving the notice.
- 16.** In deciding whether to exercise their powers to make a charge and the level of any charge they decide to make, councils will want to take into account the circumstances of the person or persons against whom enforcement action is being taken.

## **Annex C**

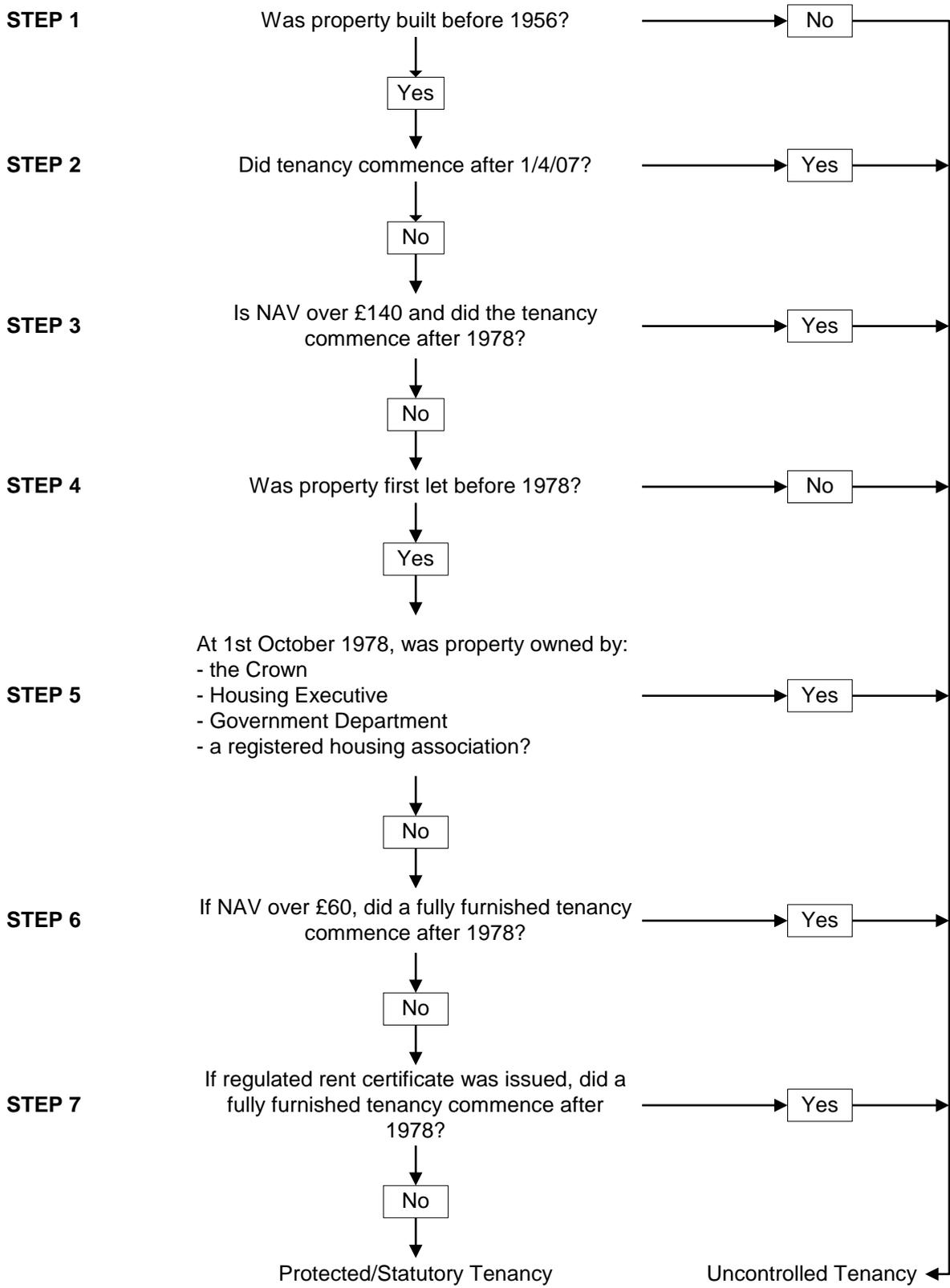
### **Protected & Statutory Tenancies**

- 1** Protected and statutory tenancies are defined with reference to the Rent Restriction Acts which were enacted between 1920 and 1956. These Acts controlled the rents of privately rented dwellings with low rateable values. The first system of rent control, known as 'old control', fixed the rents of houses built before 1919 which had a rateable value of under £26. 'New control' was introduced in 1940 and controlled rents of dwellings with a rateable value of under £50 (1939 valuation). Dwellings with a valuation of over £26 came out of rent control once they became vacant and flat conversions after 1919 were also outside control. All properties built after 1956 were excluded from rent control under the 1956 Act.
- 2** The Rent (NI) Order 1978 continued the control of rents of dwellings which were subject to the Rent Restriction Acts. Two categories of protected and statutory tenancies were created, namely restricted and regulated tenancies. It was not compulsory to register either restricted or regulated tenancies, although only properties which had been registered could have their rents increased above the 1978 level. On vacancy a dwelling which was subsequently re-let was excluded from rent control if it had a Net Annual Value of over £140.
- 3** Regulated tenancies which were let fully furnished were also excluded from rent control. This included restricted properties with an NAV under £60 which were issued with regulated rent certificates by the district council before fully furnished tenancies were created. Restricted tenancies, which were never outside rent control even if let fully furnished, were those with an NAV under £60 where no regulated rent certificate had been issued, or properties with a higher valuation where a restricted rent certificate had been issued.
- 4** It is important also to remember that the Rent Order and the PTO only

apply to tenancies and not to licenses. To be a tenancy, the tenant must have exclusive possession of the dwelling, be making some form of payment or 'consideration' and be entitled to retain possession of the dwelling for a period of time. This definition excludes lodgers, for example, who live with their landlord (no exclusive possession), people who live rent free (no 'consideration') and people whose accommodation is conditional on their being employed by their landlord (no 'term').

- 5** In accordance with Article 56 of the PTO ([reference 1.5](#)), no further protected tenancies can be created. In short, where a landlord obtains vacant possession, any new tenancy of the dwelling will not be a protected tenancy: only tenancies which commenced before 1 April 2007 can be protected tenancies. However family successors to protected and statutory tenancies remain protected. Under the Rent Order there could be two successions (i.e. on the death of the original tenant, the tenancy passes to the husband / wife / child; on the death of this person the tenancy passes again to their husband / wife / child. On this person's death there is no further succession possible and the landlord can claim possession.) Under the PTO there can only be one succession: if the tenancy has already passed once from the original tenant there can be no further statutory succession, although anyone who inherited a tenancy prior to 1 April 2007 is entitled to retain their tenancy.
- 6** The flowchart overleaf sets out a summary of the steps necessary to determine if a tenancy is protected or statutory. In theory, 'old control' and 'new control' are still part of the process of determining whether a pre 1919 or pre 1940 dwellings is let under a protected tenancy. However in practice this is unlikely to arise given the passage of time. In any case, the law states that a tenancy is a protected or statutory tenancy unless the contrary is shown. Where a case arises which falls outside the matters referred to in the flowchart, advice should be sought from the Department.

**PROTECTED AND STATUTORY TENANCIES**



## **Protected and statutory tenancies: flowchart guidance**

### **Introduction**

By following each of the steps in the flowchart it is possible to determine if a tenancy is, or was, governed by the 1978 Rent Order.

These steps are not comprehensive as the provisions of the Rent Restriction Acts are complex. In addition much of the valuation information required can only be obtained from searches at the Public Records Office. It is not suggested that district councils should undertake such searches and Article 3(3) of the Rent Order states that a dwelling is assumed to be subject to the Rent Order unless the contrary is shown. In addition, Article 30(2) and (3) of the Private Tenancies Order permits a district council to rule on the age of a dwelling in the absence of substantive proof.

### **Step 1 Age of property**

The Housing (Miscellaneous Provisions) and Rent Restriction Law (Amendment) Act (Northern Ireland) 1956 (the 1956 Act) ended rent restriction for any property built or 'converted for letting' after 1956.

The Private Tenancies Order 2006 continues this cut-off date in relation to protected and statutory tenancies. However it is the age of the *property* and not the date of any *conversion* which determines whether the dwelling must be inspected for fitness. The term 'converted for letting' includes any building which was converted into separate and self-contained units of accommodation which were then subsequently let to residential tenants. This includes a house being converted into flats or a non-residential building, such as a warehouse or barn, being converted into houses or flats.

### **Step 2 Did the tenancy commence after 1 April 2007**

Since the introduction of the Private Tenancies Order, no further protected or statutory tenancies can be created. In other words, only a tenancy which commenced before 1 April 2007 can be a protected or statutory tenancy. This does not apply to successors to protected or statutory tenancies who were resident with the former tenant in the dwelling concerned and have inherited or will inherit the tenancy on his / her death.

**Step 3 Is NAV over £140 and did tenancy commence after 1978?**

The 1978 Rent Order excluded from rent control any dwelling with a Net Annual Value of over £140 where a new tenancy had commenced after 1978. In other words where a protected or statutory tenancy existed in 1978, the NAV of the dwelling was irrelevant. However once the property became vacant, it was not subject to rent control from that time if it was let under a private tenancy.

**Step 4 Was the property first let before 1978?**

To determine if a tenancy is a protected or statutory tenancy under the Rent Order it is necessary to establish a link to the Rent Restriction Acts. As these were repealed in 1978, the property must have been let under a private tenancy and as a separate dwelling prior to 1978.

**Step 5 At 1 October 1978, was the property owned by:**

- **the Crown**
- **the Housing Executive**
- **a government department**
- **a registered housing association**

The 1956 Act excluded from rent control any dwelling which was owned by a local or public housing authority, including the Housing Trust, district councils, etc. This exclusion also subsequently applied to the Housing Executive after council and Housing Trust housing was transferred to its ownership in 1971.

The Rent Order in 1978 reinforced this by providing that only a dwelling which was governed by the Rent Restriction Acts prior to 1978 could in future be let as a protected or statutory tenancy. This means that any dwelling formerly owned by a district council, Housing Trust, a registered housing association or the Housing Executive can never be let under a protected tenancy, even if the ownership passed to a private landlord.

**Step 6 If NAV over £60, did a fully furnished tenancy commence after 1978?**

This relates to any regulated tenancy under the 1978 Rent Order which was subsequently let to a new tenant on a fully furnished basis and as a result was excluded from rent control. While the tenancy remained fully furnished, the tenancy was outside rent control, however if the dwelling was let unfurnished prior to the 1 April 2007 it would again have come under rent control.

**Step 7 If a regulated rent certificate was issued, did a fully furnished tenancy commence after 1978?**

If the NAV of a property was under £60, it remained subject to rent control even if let fully furnished. However if the district council issued a regulated rent certificate between 1978 and March 2007, the property would have become regulated and outside rent control if vacant possession was obtained and the property was re-let under a fully furnished tenancy.

## **Annex D Summary of Compliance and Enforcement with Private Tenancies (NI) Order 2006**

The following offences are liable on summary conviction to a fine not exceeding level 4 on the standard scale (£2,500).

- Article 4 (5)– Tenant to be given notice regarding certain matters – Statement of Tenancy Terms
- Article 5 (4) – Tenant to be provided with a rent book
- Article 24 (1) – Enforcement – Failure to comply with a notice of unfitness or disrepair within the appropriate period
- Article 24 (3) – Deemed to have committed a further offence if offence under paragraph 1 continues for more than 14 days after that conviction
- Article 33 (5) – Landlord failing to apply for a fitness certificate within 28 days after the date on which the tenancy is granted.
- Article 50 (2)– any person who makes an entry in a rent book or similar document showing arrears in respect of rent which is higher than the rent limit
- Article 50 (3) – The landlord does not delete the entry in the rent book or similar document showing arrears in respect of rent which is higher than the rent book within 7 days after a tenant request to do so
- Paragraph 1 (2) Schedule 2 – Any person who fails to comply with any notice served on him by a rent assessment committee requesting such information as it may reasonable require within 14 days from the service of the notice.

The following offences are liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1,000).

- Article 28 – Obstruction – offence if any person obstructs a person performing their functions relating to unfitness and disrepair.
- Article 65 (3) – Information as to the ownership of dwelling houses – Any person who fails to give requested information to the council

- Article 66 (3) – Services of notices on landlord's agents – Fails or refuses to comply with a notice served to provide information required (full name and place of abode of landlord).

## **Annex E**

## **Information Sources**

### **Strategy**

- [Building Sound Foundations - Consultation Document](#)
- [Building Sound Foundations - A Strategy for the Private Rented Sector](#)

### **Legislation**

- [Private Tenancies \(Northern Ireland\) Order 2006](#)
- [Explanatory Memorandum](#)
- [Rent Book Regulations 2007](#)
- [Tenancy Terms Regulations 2007](#)
- [Prescribed Dwelling-house Regulations 2007](#)
- [Rent Book \(Savings\) Order 2007](#)
- [Rent Assessment Committee Regulations 2007](#)
- [Prescribed Fees & Charges Regulations 2007](#)
- [Private Tenancies \(Forms etc\) Regulations 2007](#)

### **Guidance**

- [Private Tenancies - Advice for Landlords](#)
- [Private Tenancies - Advice for Tenants](#)
- [Private Tenancies - A Guide for Private Landlords and Tenants](#)
- [Protected & Statutory Tenancies - A Guide for Private Landlords and Tenants](#)
- [Protection Against Harassment & Illegal Eviction - A Guide for Private Landlords and Tenants](#)
- [Repairs - A Guide for Private Landlords and Tenants](#)
- [Template for a Rent Book](#)
- [Model Tenancy Agreement](#)
- [Statement of Tenancy Terms](#)
- [Model Inventory of Furnishings](#)

## Leaflets

- [10 Top Tips for Landlords](#)
- [Enforcement Powers - what can your Council do?](#)
- [Repairs - Whose job is it?](#)
- [Harassment and Illegal Eviction](#)
- [Who to contact for help and advice](#)